

2013
CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE
1972 ANNOTATED

Issued September 2013

**CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2013 REGULAR SESSION
AND 1ST AND 2ND EXTRAORDINARY SESSIONS
OF THE LEGISLATURE**

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.



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PUBLISHER'S FOREWORD

Statutes

The 2013 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2013 Regular Session and 1st and 2nd Extraordinary Sessions.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal 2nd
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

PUBLISHER'S FOREWORD

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2013 Regular Session and 1st and 2nd Extraordinary Sessions.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2013

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SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 25. PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS

CHAPTER 1. Public Officers; General Provisions

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- 25-1-78. Moratorium on acquisition of motor vehicles by state agencies; reduction in total number of motor vehicles by certain agencies; exemptions.
- 25-1-113. Public employment of persons convicted of embezzlement of public funds prohibited.
- 25-1-115. Certain persons prohibited from serving on executive committees [For the effective date of this section, see Editor's Note].
- 25-1-117. State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information.

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- 25-43-4.102. Definitions [Repealed effective July 1, 2016].
- 25-43-4.103. Small Business Regulatory Review Committee; duties, relation to Mississippi Development Authority, composition, terms, meetings, quorum [Repealed effective July 1, 2016].
- 25-43-4.104. Economic impact upon small business statement requirement and conditions; review and comment by committee; periodic review of final rule [Repealed effective July 1, 2016].
- 25-43-4.105. Committee opposition to promulgated regulations; agency response [Repealed effective July 1, 2016].
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SCHEDULE OF NEW SECTIONS

- 25-43-4.107. Waiver of or reduction in administrative penalty or fine under certain circumstances [Repeal effective July 1, 2016].
- 25-43-4.108. Applicability and relation to other laws [Repealed effective July 1, 2016].
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CHAPTER 61. Public Access to Public Records

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MISSISSIPPI CODE 1972

ANNOTATED

VOLUME SEVEN

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CHAPTER 1

Public Officers; General Provisions

SEC.	
25-1-78.	Moratorium on acquisition of motor vehicles by state agencies; reduction in total number of motor vehicles by certain agencies; exemptions.
25-1-113.	Public employment of persons convicted of embezzlement of public funds prohibited.
25-1-115.	Certain persons prohibited from serving on executive committees [For the effective date of this section, see Editor's Note].
25-1-117.	State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information.

§ 25-1-53. Nepotism prohibited.**ATTORNEY GENERAL OPINIONS**

A full-time firefighter, like all other municipal officers and employees, is prohibited from being a commissioner of the municipal housing authority under Miss. Code Ann. § 43-33-7. The appointment of a spouse of a member of the board of aldermen as a commissioner of the municipal housing authority violates the Nepotism Statute, Miss. Code Ann. § 25-1-53, except that a person serving as commissioner prior to election of their spouse

to the board of aldermen may be reappointed. Tucker, March 15, 2007, A.G. Op. #07-00130, 2007 Miss. AG LEXIS 103.

Subject to the Mississippi Nepotism Statute, Miss. Code Ann. § 25-1-53, an individual may not be subsequently transferred or promoted to another prohibited position after a relative within the third degree becomes the hiring authority. Hathorn, March 9, 2007, A.G. Op. #07-00129, 2007 Miss. AG LEXIS 96.

§ 25-1-78. Moratorium on acquisition of motor vehicles by state agencies; reduction in total number of motor vehicles by certain agencies; exemptions.

(1) For purposes of this section, the term “state agency” means any agency that is subject to oversight by the Bureau of Fleet Management of the Department of Finance and Administration under Section 25-1-77.

(2) Except as otherwise provided in this section, beginning on July 1, 2012, through June 30, 2013, the Bureau of Fleet Management, Department of Finance and Administration, shall not approve the purchase, lease or acquisition of any motor vehicle by a state agency, regardless of the source of funds used.

(3) Beginning July 1, 2012, any state agency with a fleet of more than fifty (50) motor vehicles shall reduce the total number of its motor vehicles by two percent (2%) each fiscal year until June 30, 2016. The Bureau of Fleet Management and the State Auditor shall work together to enforce the provisions of this subsection.

(4) The provisions of subsections (2) and (3) of this section, with regard to the purchase, lease or acquisition of vehicles and to the mandatory reduction of the agency’s fleet of vehicles, shall not apply to:

(a) A state agency’s law enforcement or emergency vehicles, upon demonstrating to the Bureau of Fleet Management a justifiable need to be excluded from the provisions of subsections (2) and (3) of this section.

(b) A state agency’s vehicles that are acquired by the use of grant monies that are specified to be used for that purpose.

SOURCES: Laws, 2012, ch. 559 § 1, effective July 1, 2012

§ 25-1-87. Marking publicly owned or leased vehicle; exceptions; effect of noncompliance.

ATTORNEY GENERAL OPINIONS

Unless a specific police vehicle is designated as unmarked by the governing authority of a municipality, it must be marked in accordance with Miss. Code

Ann. § 25-1-87. Sullivan, March 16, 2007, A.G. Op. #07-00115, 2007 Miss. AG LEXIS 111.

§ 25-1-100. Certain personnel records exempt from public access requirements; exceptions.

ATTORNEY GENERAL OPINIONS

A school board may employ legal counsel other than the Board Attorney only by a majority vote of a quorum present in a properly noticed and open meeting of the board, and must officially hire an attorney before sharing any confidential personnel records. Reasons for non-renewal of a superintendent's contract and any settle-

ment offers must be approved and recorded in the minutes at an official meeting of the board. All policies, actions, and decisions of the school board must be reasonable and necessary to meet the educational needs of the district's children. Foreman, March 30, 2007, A.G. Op. #07-00119, 2007 Miss. AG LEXIS 71.

§ 25-1-113. Public employment of persons convicted of embezzlement of public funds prohibited.

From and after July 1, 2013, the state and any county, municipality or any other political subdivision may not employ a person who has been convicted or pled guilty in any court of this state, another state, or in federal court of any felony in which public funds were unlawfully taken, obtained or misappropriated in the abuse or misuse of the person's office or employment or money coming into the person's hands by virtue of the person's office or employment.

SOURCES: Laws, 2013, ch. 528, § 1, eff from and after July 1, 2013.

§ 25-1-115. Certain persons prohibited from serving on executive committees [For the effective date of this section, see Editor's Note].

(1) No person shall serve on any temporary municipal executive committee, municipal executive committee, temporary county executive committee, county executive committee or state executive committee if the person has been convicted of a criminal violation of the Mississippi Election Code, has been convicted of an election crime contained in Chapter 13, Title 97, Mississippi Code of 1972, has been removed from public office pursuant to Section 25-5-1, or who has resigned from office as part of a plea agreement.

(2) Any person who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in Section 99-19-31 and removed from the committee.

SOURCES: Laws, 2013, ch. 391, § 1, eff _____ (the date of the United States Attorney General’s response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

Editor’s Note — The effective date of the enactment of this section has not yet been determined. The effective date of the bill that enacted this section is “from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.” However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General’s Office will be submitting the bill that amended this section to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

The United States Attorney General is not making determinations on the merits of any bill that is submitted under Section 5, and is responding with a letter to that effect. The submission of the bill that enacted this section and the response from the United States Attorney General will technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill. So, this section will be effective from and after the date of the response letter from the United States Attorney General. After the response letter is received, the effective date of this section will be included in the Advance Code Service.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 25-1-117. State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information.

Each state agency and each statewide elected official that provides information to the public about the agency or office on a website on the Internet shall review and update the information on the website on a regular basis, not less frequently than once a month, to ensure that the information appearing on the website is current and that outdated information has been removed or placed in a separate section of archived information.

SOURCES: Laws, 2013, ch. 369, § 1, eff from and after July 1, 2013.

CHAPTER 3

Salaries and Compensation

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GENERAL PROVISIONS

SEC.	
25-3-35.	Salaries of elected judiciary, district attorneys and legal assistants.
25-3-39.	Ceiling established for salaries; sources of funding for salaries; exemptions for Executive Director of Mississippi Development Authority, Governor's Chief of Staff and certain professional public employees.

§ 25-3-35. Salaries of elected judiciary, district attorneys and legal assistants.

(1) The annual salaries of the following judges are fixed as follows:

From and after January 1, 2013, through December 31, 2013:

Chief Justice of the Supreme Court	\$ 126,292.50
Presiding Justices of the Supreme Court, each	123,600.75
Associate Justices of the Supreme Court, each	122,460.00

From and after January 1, 2014, through December 31, 2014:

Chief Justice of the Supreme Court	\$137,195.00
Presiding Justices of the Supreme Court, each	134,011.50
Associate Justices of the Supreme Court, each	132,390.00

From and after January 1, 2015, through December 31, 2015:

Chief Justice of the Supreme Court	\$148,097.50
Presiding Justices of the Supreme Court, each	144,422.25
Associate Justices of the Supreme Court, each	142,320.00

From and after January 1, 2016:

Chief Justice of the Supreme Court	\$159,000.00
Presiding Justices of the Supreme Court, each	154,833.00
Associate Justices of the Supreme Court, each	152,250.00

There are imposed upon the Supreme Court justices the extra duties of taking all necessary action to promote judicial education in schools, drug courts, electronic filing and case management systems as developed by the Administrative Office of Courts, or such other additional duties as may be assigned by the Chief Justice of the Supreme Court. For such extra services each justice, from and after January 1, 2013, shall receive a sum sufficient to aggregate, per annum, the salaries set forth in this subsection (1).

The fixed salaries in this subsection (1) shall be paid from the State General Fund and from the Judicial System Operation Fund created under Section 9-21-45. No less than: One Hundred Fifteen Thousand Three Hundred Ninety Dollars (\$115,390.00) of the Chief Justice's salary in this subsection (1),

One Hundred Thirteen Thousand One Hundred Ninety Dollars (\$113,190.00) of the salary of a Presiding Justice in this subsection (1), and One Hundred Twelve Thousand Five Hundred Thirty Dollars (\$112,530.00) of the salary of an Associate Justice in this subsection (1) shall be paid from General Fund monies; in addition, the Legislature shall appropriate annually from the Judicial System Operation Fund a sum sufficient to increase the salary of the Chief Justice, a Presiding Justice and an Associate Justice to the levels set forth in this subsection (1).

The fixed salaries as specified in this subsection (1) shall be the exclusive and total compensation which can be reported to the Public Employees' Retirement System for retirement purposes; however, any judge in office on December 31, 2003, may continue to report his expense allowance as part of his compensation for retirement purposes.

(2) The annual salaries of the judges of the Court of Appeals of Mississippi are fixed as follows:

From and after January 1, 2013, through December 31, 2013:	
Chief Judge of the Court of Appeals	\$ 117,992.00
Associate Judges of the Court of Appeals, each	114,994.25
From and after January 1, 2014, through December 31, 2014:	
Chief Judge of the Court of Appeals	\$127,854.00
Associate Judges of the Court of Appeals, each	124,938.50
From and after January 1, 2015, through December 31, 2015:	
Chief Judge of the Court of Appeals	\$137,716.00
Associate Judges of the Court of Appeals, each.	134,882.75
From and after January 1, 2016:	
Chief Judge of the Court of Appeals	\$147,578.00
Associate Judges of the Court of Appeals, each	144,827.00

From and after January 1, 2013, each judge shall receive a sum sufficient to aggregate, per annum, the salaries set forth in this subsection (2).

The fixed salaries in this subsection (2) shall be paid from the State General Fund and from the Judicial System Operation Fund created under Section 9-21-45. No less than One Hundred Eight Thousand One Hundred Thirty Dollars (\$108,130.00) of the Chief Judge's salary in this subsection (2) shall be paid from General Fund monies; in addition, the Legislature shall appropriate annually from the Judicial System Operation Fund a sum sufficient to increase the Chief Judge's salary to the level set forth in this subsection (2). No less than One Hundred Five Thousand Fifty Dollars (\$105,050.00) of the salary of an Associate Judge in this subsection (2) shall be paid from General Fund monies; in addition, the Legislature shall appropriate annually from the Judicial System Operation Fund a sum sufficient to increase the salary of an Associate Judge to the level set forth in this subsection (2).

The fixed salaries as specified in this subsection (2) shall be the exclusive and total compensation which can be reported to the Public Employees' Retirement System for retirement purposes; however, any judge in office on December 31, 2003, may continue to report his expense allowance as part of his compensation for retirement purposes.

(3) The annual salaries of the chancery and circuit court judges are fixed as follows:

From and after January 1, 2013, through December 31, 2013:

Chancery Judges, each\$ 112,127.50
 Circuit Judges, each112,127.50

From and after January 1, 2014, through December 31, 2014:

Chancery Judges, each\$120,085.00
 Circuit Judges, each120,085.00

From and after January 1, 2015, through December 31, 2015:

Chancery Judges, each\$128,042.50
 Circuit Judges, each128,042.50

From and after January 1, 2016:

Chancery Judges, each\$136,000.00
 Circuit Judges, each136,000.00

In addition to their present official duties, the circuit and chancery judges shall take necessary action to promote judicial education in schools, drug courts, electronic filing and case management systems as developed by the Administrative Office of Courts, or such other additional duties as may be assigned by the Chief Justice of the Supreme Court. For such extra services each judge, from and after January 1, 2013, shall receive a sum sufficient to aggregate, per annum, the salaries set forth in this subsection (3).

The fixed salaries in this subsection (3) shall be paid from the State General Fund and from the Judicial System Operation Fund created under Section 9-21-45. No less than One Hundred Four Thousand One Hundred Seventy Dollars (\$104,170.00) of the salary of a Chancery or Circuit Judge in this subsection (3) shall be paid from General Fund monies; in addition, the Legislature shall appropriate annually from the Judicial System Operation Fund a sum sufficient to increase the salary of a Chancery or Circuit Judge to the levels set forth in this subsection (3).

(4) From and after January 1, 2019, and every four (4) years thereafter, the annual salaries of the judges in subsections (1), (2) and (3) shall be fixed at the level of compensation recommended by the State Personnel Board according to the board's most recent report on judicial salaries, as required under Section 25-9-115, to the extent that sufficient funds are available. The annual salaries fixed in accordance with this subsection (4) shall not become effective until the commencement of the next immediately succeeding term of office.

(5) The Supreme Court shall prepare a payroll for chancery judges and circuit judges and submit such payroll to the Department of Finance and Administration.

(6) The annual salary of the full-time district attorneys shall be:

From and after January 1, 2013, through December 31, 2013:

One Hundred Three Thousand Three Hundred Twenty-two Dollars (\$103,322.00).

From and after January 1, 2014, through December 31, 2014:

One Hundred Ten Thousand Eight Hundred Forty-eight Dollars (\$110,848.00).

From and after January 1, 2015, through December 31, 2015:

One Hundred Eighteen Thousand Three Hundred Seventy-four Dollars (\$118,374.00).

From and after January 1, 2016:

One Hundred Twenty-five Thousand Nine Hundred Dollars (\$125,900.00).

(7) The annual salary of the full-time legal assistants shall be not less than Fifteen Thousand Dollars (\$15,000.00) nor more than eighty percent (80%) of the salary of the district attorney for legal assistants who have been licensed to practice law for five (5) years or less; eighty-five percent (85%) of the salary of the district attorney for legal assistants who have been licensed to practice law for at least five (5) years but less than fifteen (15) years; and ninety percent (90%) of the salary of the district attorney for legal assistants who have been licensed to practice law for at least fifteen (15) years or more.

SOURCES: Codes, 1942, § 4175.5; Laws, 1966, ch. 445, § 2; Laws, 1970, ch. 402, § 3; Laws, 1974, ch. 351; Laws, 1978, ch. 520, § 4; Laws, 1983, ch. 536, § 3; Laws, 1988, ch. 528, § 4; Laws, 1991, ch. 373, § 3; Laws, 1993, ch. 481, § 5; Laws, 1993, ch. 518, § 32; Laws, 1997, ch. 577, § 3; Laws, 1999, ch. 581, § 3; Laws, 2003, ch. 563, § 2; Laws, 2006, ch. 548, § 2; Laws, 2008, ch. 548, § 1; Laws, 2012, ch. 329, § 1, eff January 1, 2013 (the later of the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section, or January 1, 2013.)

Editor's Note — By letter dated August 24, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 329, Laws of 2012.

Amendment Notes — The 2012 amendment rewrote the section.

§ 25-3-39. Ceiling established for salaries; sources of funding for salaries; exemptions for Executive Director of Mississippi Development Authority, Governor's Chief of Staff and certain professional public employees.

(1)(a) Except as otherwise provided in this section, no public officer, public employee, administrator, or executive head of any arm or agency of the state, in the executive branch of government, shall be paid a salary or compensation, directly or indirectly, greater than one hundred fifty percent (150%) of the salary fixed in Section 25-3-31 for the Governor, nor shall the salary of any public officer, public employee, administrator, or executive head of any arm or agency of the state, in the executive branch of government, be supplemented with any funds from any source, including federal or private funds. Such salaries shall be completely paid by the state. All academic officials, members of the teaching staffs and employees of the state institutions of higher learning, the State Board for Community and Junior Colleges, and community and junior colleges, and licensed physicians who are public employees, shall be exempt from this subsection. All professional employees who hold a bachelor's degree or more advanced degree from an accredited four-year college or university or a certificate or license issued by

a state licensing board, commission or agency and who are employed by the Department of Mental Health shall be exempt from this subsection if the State Personnel Board approves the exemption.

(b) The Governor shall fix the annual salary of the Executive Director of the Mississippi Development Authority and the annual salary of the Chief of Staff of the Governor's Office. The salary of the Governor's Chief of Staff shall not be greater than one hundred fifty percent (150%) of the salary of the Governor and shall be completely paid by the state without supplementation from another source. The salary of the Executive Director of the Mississippi Development Authority may be greater than one hundred fifty percent (150%) of the salary of the Governor and may be supplemented with funds from any source, including federal or private funds; however, any state funds used to pay the salary of the Executive Director of the Mississippi Development Authority shall not exceed one hundred fifty percent (150%) of the salary of the Governor. If the executive director's salary is supplemented with private funds, the Mississippi Development Authority shall publish on its website the amount of the supplement and the name of the donor of the private funds.

(2) No public officer, employee or administrator shall be paid a salary or compensation, directly or indirectly, in excess of the salary authorized to be paid the executive head of the state agency or department in which he is employed. The State Personnel Board, based upon its findings of fact, may exempt physicians and actuaries from this subsection when the acquisition of such professional services is precluded based on the prevailing wage in the relevant labor market.

(3) The executive head of any state agency or department appointed by the Governor, in such executive head's discretion, may waive all or any portion of the salary or compensation lawfully established for the position.

SOURCES: Codes, 1942, § 4175.9; Laws, 1932, ch. 333; Laws, 1970, ch. 402, § 5; Laws, 1978, ch. 520, § 17; Laws, 1981, ch. 504, § 15; Laws, 1993, ch. 518, § 33; Laws, 1997, ch. 609, § 2; Laws, 2000, ch. 525, § 1; Laws, 2003, ch. 406, § 2; Laws, 2003, ch. 563, § 3; Laws, 2004, ch. 575, § 1; Laws, 2012, ch. 383, § 1, eff from and after passage (approved Apr. 17, 2012.)

Editor's Note — Section 37-4-5 provides that the terms "Junior College Commission" and "State Board for Community and Junior Colleges," wherever they appear in the laws of Mississippi, shall mean the "Mississippi Community College Board."

Amendment Notes — The 2012 amendment in (1)(a), added the exception, added language beginning "nor shall the salary of any public officer" to the end of the first sentence and added the second sentence, deleted the former third sentence, which read "The Governor shall fix the annual salary of the Executive Director of the Mississippi Development Authority and the annual salary of the Chief of Staff of the Governor's Office, which salaries shall be completely paid by the state and may not be supplemented with any funds from any source, including federal or private funds. Provided, however, that the salary of the Executive Director of the Mississippi Development Authority and the Governor's Chief of Staff shall not be greater than one hundred fifty percent (150%) of the salary of the Governor. Furthermore"; and added (1)(b).

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

§ 25-3-40. Annual salary increases; intent to implement minimum wage and maximize salary increases.

Cross References — Local authorities prohibited from regulating how a private employer pays its employees, see § 17-1-51.

§ 25-3-41. Traveling expenses of state officers and employees; travel services by commercial travel agency.

ATTORNEY GENERAL OPINIONS

A governing authority may define which expenses are reimbursable travel expenses, consistent with the rules and regulations of the Department of Finance and Administration. Reimbursement of travel expenses may only be made for travel authorized by a governing authority in minutes or by resolution or ordinance, and must be included in the annual budget. A governing authority can authorize a department head to approve travel it has budgeted. Only the administrative head of a municipal department may authorize travel advances. Campbell, March 23, 2007, A.G. Op. #07-00135, 2007 Miss. AG LEXIS 120.

§ 25-3-69. Uniform per diem compensation for officers and employees of state boards, commissions and agencies.

ATTORNEY GENERAL OPINIONS

A full-time firefighter, like all other municipal officers and employees, is prohibited from being a commissioner of the municipal housing authority under Miss. Code Ann. § 43-33-7. The appointment of a spouse of a member of the board of aldermen as a commissioner of the municipal housing authority violates the Nepotism Statute, Miss. Code Ann. § 25-1-53, except that a person serving as commissioner prior to election of their spouse to the board of aldermen may be reappointed. Tucker, March 15, 2007, A.G. Op. #07-00130, 2007 Miss. AG LEXIS 103.

CHAPTER 4
Ethics in Government

Article 1.	Mississippi Ethics Commission	25-4-1
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ARTICLE 1.

MISSISSIPPI ETHICS COMMISSION.

SEC.	
25-4-29.	Filing dates for statements.

§ 25-4-29. Filing dates for statements.

(1) Required statements hereunder shall be filed as follows:

(a) Every incumbent public official required by paragraphs (a), (b), (d) and (e) of Section 25-4-25 to file a statement of economic interest shall file such statement with the commission on or before May 1 of each year that such official holds office, regardless of duration;

(b) Candidates for office required to file a statement hereunder shall file such statement within fifteen (15) days after the deadline for qualification for that public office;

(c) Persons who are required to file a statement because of appointment to fill a vacancy in an office or required to file under Section 25-4-25(d) and (e) shall file such statement within thirty (30) days of their appointment;

(d) No person by reason of successful candidacy or assuming additional offices shall be required to file more than one (1) statement of economic interest in any calendar year, except such official shall notify the commission as soon as practicable of additional offices not previously reported; and

(e) The commission may, on an individual case basis, provide for additional time to file a statement upon a showing that compliance with a filing date set out under paragraph (a), (b), (c) or (d) above would work an unreasonable hardship.

(2) Any person who fails to file a statement of economic interest within thirty (30) days of the date the statement is due shall be deemed delinquent by the commission. The commission shall give written notice of the delinquency to the person by United States mail or by personal service of process. If within fifteen (15) days of receiving written notice of delinquency the delinquent filer has not filed the statement of economic interest, a fine of Fifty Dollars (\$50.00) per day, not to exceed a total fine of One Thousand Dollars (\$1,000.00), shall be assessed against the delinquent filer for each day thereafter in which the statement of economic interest is not properly filed. The commission shall enroll such assessment as a civil judgment with the circuit clerk in the delinquent filer's county of residence. The commission may enforce the judgment for the benefit of the State General Fund for the support of the Mississippi Adequate Education Program in the same manner as is prescribed for other civil judgments.

SOURCES: Laws, 1979, ch. 508, § 10; reenacted and amended, Laws, 1982, ch. 488, § 16; reenacted, Laws, 1986, ch. 348, § 16; reenacted, Laws, 1990, ch. 491; Laws, 1995, ch. 360, § 16; reenacted without change, Laws, 1998, ch. 350, § 16; Laws, 2008, ch. 562, § 10; Laws, 2011, ch. 488, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment substituted “deadline for qualification for that” for “time that such person becomes a candidate for” preceding “public office” in (1)(b); in (2), deleted “restricted delivery” following “United States mail” in the second sentence, substituted “Fifty Dollars (\$50.00)” for “Ten Dollars (\$10.00)” and inserted “not to exceed a total fine of One Thousand Dollars (\$1,000.00)” in the third sentence; and inserted “for the support of the Mississippi Adequate Education Program” following “State General Fund” in the last sentence.

Cross References — Mississippi Adequate Education Program, see §§ 37-151-1 et seq.

ARTICLE 3.

CONFLICT OF INTEREST; IMPROPER USE OF OFFICE.

§ 25-4-101. Declaration of public policy.

ATTORNEY GENERAL OPINIONS

The Separation of Powers doctrine, Miss. Const., Art. 1, §§ 1-2, prohibits an individual from holding two offices in two different branches of government simultaneously. An individual may simultaneously serve as a member of a county school

board and as county circuit clerk because both offices are within the executive branch of the government. Maples, February 16, 2007, A.G. Op. #07-00074, 2007 Miss. AG LEXIS 22.

§ 25-4-103. Definitions.

ATTORNEY GENERAL OPINIONS

Campaign contributions legally received from regulated utility companies during a prior Mississippi House of Representatives campaign, that were not spent during that campaign, can be used in a prospective upcoming campaign for Public Service Commissioner even though they would otherwise be prohibited contri-

butions, so long as they were made prior to any discussion or consideration of running for Public Service Commissioner and prior to becoming a candidate for the office, as described in Miss. Code Ann. § 77-1-11. Ellington, February 9, 2007, A.G. Op. #07-00071, 2007 Miss. AG LEXIS 20.

CHAPTER 5

Removals From Office

§ 25-5-1. Removals from office.

Cross References — Removal from public office pursuant to this section as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

ATTORNEY GENERAL OPINIONS

The separation of powers doctrine, Miss. Const. of 1890, Art. 1, § 2, does not prohibit a city firefighter from serving simultaneously as a county supervisor. Although the two positions are within separate branches of the county government, a firefighter does not exercise sub-

stantial policy-making power at the core of the executive branch so there is no conflict. Inquiries concerning potential ethics issues should be referred to the Ethics Commission. Bowen, March 2, 2007, A.G. Op. #07-00094, 2007 Miss. AG LEXIS 85.

CHAPTER 7

Fees

SEC.	
25-7-3.	Clerk of the Supreme Court.
25-7-9.	Clerks of the chancery court.
25-7-13.	Clerks of the circuit court.

§ 25-7-3. Clerk of the Supreme Court.

The Clerk of the Supreme Court shall charge the following fees:

(a) General docket fee, for filing the record on appeal in a civil or criminal case	\$ 200.00
(b) Miscellaneous docket fee	50.00
(c) Confidential miscellaneous docket fee	200.00
(d) Admission of new attorneys	30.00
(e) Act of Congress certificate	25.00
(f) Certificate of admission replacement	25.00
(g) Certificate of good standing replacement	10.00
(h) Attest stamp	5.00
(i) Order from Minute Book	10.00
(j) Regular copying	50 per page
(k) Copying from bound volumes or records	2.00 per page
(l) Copy of mandate	10.00
(m) Minimum copy charge	1.00
(n) Notary fee	2.50
(o) Decision list charge	5.00
(p) Handling charge and retrieval and delivery charges on completed Supreme Court records (to be retained out of deposit)	
On-site retrieval	10.00
Off-site retrieval	15.00
(q) Forfeited deposits on completed Supreme Court records	100.00
(r) Petition for rehearing	50.00

Said general docket fee shall be collected from the appellant by the clerk of the lower court and forwarded to the Clerk of the Supreme Court. The Clerk of the Supreme Court shall charge the maximum amount allowable by law for services rendered where charges for such services are provided by statute; for any other services rendered, the amount charged shall be consistent with the cost of providing such services. All fees shall be paid in the form of cash, cashier's check, or money order or by a check on the account of an attorney payable to the Clerk of the Supreme Court. All fees authorized to be assessed and collected by the Clerk of the Supreme Court shall be deposited into the State General Fund, except that One Hundred Dollars (\$100.00) of the general docket fee set under paragraph (a), Twenty-five Dollars (\$25.00) of the miscellaneous docket fee set under paragraph (b), One Hundred Dollars

(\$100.00) of the confidential miscellaneous fee set under paragraph (c), Fifteen Dollars (\$15.00) of the act of Congress certificate set under paragraph (e), Ten Dollars (\$10.00) of the certificate of admission replacement set under paragraph (f), Two Dollars and Fifty Cents (\$2.50) of the attest stamp set under paragraph (h), Five Dollars (\$5.00) of the order from minute book set under paragraph (i), Seven Dollars (\$7.00) of the copy of mandate set under paragraph (l), Fifty Dollars (\$50.00) of the forfeited deposits on completed Supreme Court records set under paragraph (q), Twenty-five Dollars (\$25.00) of the petition for rehearing fee under paragraph (r), and the total amount charged for any other services rendered shall be deposited to the credit of the Judicial System Operation Fund established in Section 9-21-45.

SOURCES: Codes, 1880, § 440; 1892, § 1988; 1906, § 2164; Hemingway’s 1917, § 1845; 1930, § 1783; 1942, § 3929; Laws, 1978, ch 335, § 35; Laws, 1984, ch. 407; Laws, 1986, ch. 490; Laws, 1989, ch. 336, § 1; Laws, 1993, ch. 386, § 1; Laws, 2012, ch. 329, § 3, eff from and after July 1, 2012.

Editor’s Note — Laws of 2012, ch. 329, § 11, provides:
“SECTION 11. Sections 1 and 8 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, whichever occurs later; and the remainder of this act shall take effect and be in force from and after July 1, 2012.”

Amendment Notes — The 2012 amendment rewrote the last sentence in the last paragraph.

§ 25-7-9. Clerks of the chancery court.

(1) The clerks of the chancery courts shall charge the following fees:

- (a) For the act of certifying copies of filed documents, for each complete document\$ 1.00
- (b)(i) Recording each deed, will, lease, amendment, subordination, lien, release, cancellation, order, decree, oath, etc., per book and page listed where applicable; for the first fifteen (15) pages\$ 10.00
 - Each additional page\$ 1.00
- (ii) Sectional index entries per section or subdivision lot\$ 1.00
- (c) Recording each deed of trust, for the first fifteen
- (15) pages\$ 15.00
 - Each additional page\$ 1.00
 - Sectional index entries per section or subdivision lot\$ 1.00
- (d)(i) Recording oil and gas leases, cancellations, etc., including indexing in general indices; for the first fifteen (15) pages\$ 18.00
 - Each additional page\$ 1.00
- (ii) Sectional index entries per section or subdivision lot\$ 1.00
- (iii) Recording each oil and gas assignment
- per assignee\$ 18.00
- (e)(i) Furnishing copies of any papers of record or on file:
 - If performed by the clerk or his employee, per page\$.50
 - If performed by any other person, per page\$.25
- (ii) Entering marginal notations on documents of record.....\$ 1.00

(f) For each day's attendance on the board of supervisors, for himself and one (1) deputy, each\$ 20.00

(g) For other services as clerk of the board of supervisors an allowance shall be made to him (payable semiannually at the July and January meetings) out of the county treasury, an annual sum not exceeding\$3,000.00

(h) For each day's attendance on the chancery court, to be approved by the chancellor:

For the first chancellor sitting only, clerk and two (2) deputies, each\$ 50.00

For the second chancellor sitting, clerk only\$ 50.00

Provided that the fees herein prescribed shall be the total remuneration for the clerk and his deputies for attending chancery court.

(i) On order of the court, clerks and not more than two (2) deputies may be allowed five (5) extra days for each term of court for attendance upon the court to get up records.

(j) For public service not otherwise specifically provided for, the chancery court may by order allow the clerk to be paid by the county on the order of the board of supervisors, an annual sum not exceeding\$5,000.00

(k) For each civil filing, to be deposited into the Civil Legal Assistance Fund\$ 5.00

The chancery clerk shall itemize on the original document a detailed fee bill of all charges due or paid for filing, recording and abstracting same. No person shall be required to pay such fees until same have been so itemized, but those fees may be demanded before the document is recorded.

(2) The following fees shall be a total fee for all services performed by the clerk with respect to a complaint which shall be payable upon filing and shall accrue to the chancery clerk at the time of filing. The clerk or his successor in office shall perform all duties set forth without additional compensation or fee to wit:

- (a) Divorce to be contested\$75.00
- (b) Divorce uncontested\$30.00
- (c) Alteration of birth or marriage certificate\$25.00
- (d) Removal of minority\$25.00
- (e) Guardianship or conservatorship\$75.00
- (f) Estate of deceased, intestate\$75.00
- (g) Estate of deceased, testate\$75.00
- (h) Adoption\$75.00
- (i) Land dispute\$75.00
- (j) Injunction\$75.00
- (k) Settlement of small claim\$30.00
- (l) Contempt in child support\$75.00
- (m) Partition suit\$75.00
- (n) Any cross-complaint\$25.00
- (o) Commitment\$75.00

(3) For every civil case filed:

- (a) An additional fee to be deposited to the credit of the Comprehensive Electronic Court Systems Fund established in Section 9-21-14\$10.00
- (b) An additional fee to be deposited to the credit of the Judicial System Operation Fund established in Section 9-21-45\$40.00
- (4) Cost of process shall be borne by the issuing party. Additionally, should the attorney or person filing the pleadings desire the clerk to pay the cost to the sheriff for serving process on one (1) person or more, or to pay the cost of publication, the clerk shall demand the actual charges therefor, at the time of filing.

SOURCES: Codes, 1880, § 442; 1892, § 1991; 1906, § 2167; Hemingway’s 1917, § 1848; 1930, §§ 1786, 1804; 1942, §§ 3932, 3952; Laws, 1928, chs. 87, 227; Laws, 1940, ch. 230; Laws, 1950, ch. 291; Laws, 1968, ch. 361, § 65; Laws, 1970, ch. 397, § 1; Laws, 1970, ch. 398, § 2; Laws, 1981, ch. 497, § 1; Laws, 1993, ch. 481, § 2; Laws, 2004, ch. 505, § 10; Laws, 2005, ch. 323, § 1; Laws, 2006, ch. 447, § 1; Laws, 2006, ch. 573, § 2; Laws, 2006, ch. 577, § 1; Laws, 2007, ch. 476, § 1; Laws, 2010, ch. 398, § 1; Laws, 2012, ch. 329, § 4, eff from and after July 1, 2012.

Editor’s Note — Laws of 2012, ch. 329, § 11, provides:
“SECTION 11. Sections 1 and 8 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, whichever occurs later; and the remainder of this act shall take effect and be in force from and after July 1, 2012.”
Amendment Notes — The 2012 amendment inserted the (3)(a) designation and added (3)(b); and made minor stylistic changes

§ 25-7-13. Clerks of the circuit court.

- (1) The clerks of the circuit court shall charge the following fees:
 - (a) Docketing, filing, marking and registering each complaint, petition and indictment\$ 85.00
- The fee set forth in this paragraph shall be the total fee for all services performed by the clerk up to and including entry of judgment with respect to each complaint, petition or indictment, including all answers, claims, orders, continuances and other papers filed therein, issuing each writ, summons, subpoena or other such instruments, swearing witnesses, taking and recording bonds and pleas, and recording judgments, orders, fiats and certificates; the fee shall be payable upon filing and shall accrue to the clerk at the time of collection. The clerk or his successor in office shall perform all duties set forth above without additional compensation or fee.
- (b) Docketing and filing each motion to renew judgment, notice of renewal of judgment, suggestion for a writ of garnishment, suggestion for a writ of execution and judgment debtor actions and issuing all process, filing and recording orders or other papers and swearing witnesses\$ 35.00
- (c) For every civil case filed, an additional fee to be deposited to the credit of the Comprehensive Electronic Court Systems Fund established in Section 9-21-14\$ 10.00

(d) For every civil case filed, an additional fee to be deposited to the credit of the Judicial System Operation Fund established in Section 9-21-45\$ 40.00

(2) Except as provided in subsection (1) of this section, the clerks of the circuit court shall charge the following fees:

(a) Filing and marking each order or other paper and recording and indexing same\$ 2.00

(b) Issuing each writ, summons, subpoena, citation, capias and other such instruments\$ 1.00

(c) Administering an oath and taking bond\$ 2.00

(d) Certifying copies of filed documents, for each complete document\$ 1.00

(e) Recording orders, fiats, licenses, certificates, oaths and bonds:

First page\$ 2.00

Each additional page\$ 1.00

(f) Furnishing copies of any papers of record or on file and entering marginal notations on documents of record:

If performed by the clerk or his employee,

per page\$ 1.00

If performed by any other person, per page\$.25

(g) Judgment roll entry\$ 5.00

(h) Taxing cost and certificate\$ 1.00

(i) For taking and recording application for marriage license, for filing and recording consent of parents when required by law, for filing and recording medical certificate, filing and recording proof of age, recording and issuing license, recording and filing returns\$ 20.00

The clerk shall deposit Fourteen Dollars (\$14.00) of each fee collected for a marriage license in the Victims of Domestic Violence Fund established in Section 93-21-117, on a monthly basis.

(j) For certified copy of marriage license and search of record, the same fee charged by the Bureau of Vital Statistics of the State Board of Health.

(k) For public service not particularly provided for, the circuit court may allow the clerk, per annum, to be paid by the county on presentation of the circuit court's order, the following amount\$5,000.00

However, in the counties having two (2) judicial districts, such above allowance shall be made for each judicial district.

(l) For drawing jurors and issuing venire, to be paid by the county\$ 5.00

(m) For each day's attendance upon the circuit court term, for himself and necessary deputies allowed by the court, each to be paid by the county\$ 50.00

(n) Summons, each juror to be paid by the county upon the allowance of the court\$ 1.00

(o) For issuing each grand jury subpoena, to be paid by the county on allowance by the court, not to exceed Twenty-five Dollars (\$25.00) in any one

(1) term of court\$ 1.00

(p) For each civil filing, to be deposited into the Civil Legal Assistance Fund\$ 5.00

(3) On order of the court, clerks and deputies may be allowed five (5) extra days for attendance upon the court to get up records.

(4) The clerk's fees in state cases where the state fails in the prosecution, or in cases of felony where the defendant is convicted and the cost cannot be made out of his estate, in an amount not to exceed Four Hundred Dollars (\$400.00) in one (1) year, shall be paid out of the county treasury on approval of the circuit court, and the allowance thereof by the board of supervisors of the county. In counties having two (2) judicial districts, such allowance shall be made in each judicial district; however, the maximum thereof shall not exceed Eight Hundred Dollars (\$800.00). Clerks in the circuit court, in cases where appeals are taken in criminal cases and no appeal bond is filed, shall be allowed by the board of supervisors of the county after approval of their accounts by the circuit court, in addition to the above fees, for making such transcript the rate of Two Dollars (\$2.00) per page.

(5) The clerk of the circuit court may retain as his commission on all money coming into his hands, by law or order of the court, a sum to be fixed by the court not exceeding one-half of one percent ($\frac{1}{2}$ of 1%) on all such sums.

(6) For making final records required by law, including, but not limited to, circuit and county court minutes, and furnishing transcripts of records, the circuit clerk shall charge Two Dollars (\$2.00) per page. The same fees shall be allowed to all officers for making and certifying copies of records or papers which they are authorized to copy and certify.

(7) The circuit clerk shall prepare an itemized statement of fees for services performed, cost incurred, or for furnishing copies of any papers of record or on file, and shall submit the statement to the parties or, if represented, to their attorneys within sixty (60) days. A bill for same shall accompany the statement.

SOURCES: Codes, 1880, § 443; 1892, § 1993; 1906, § 2169; Hemingway's 1917, § 1850; 1930, §§ 1788, 1804; 1942, §§ 3934, 3952; Laws, 1928, chs. 87, 227; Laws, 1938, ch. 292; Laws, 1940, ch. 230; Laws, 1948, ch. 237; Laws, 1950, ch. 239; Laws, 1958, ch. 330; Laws, 1968, ch. 361, § 65; Laws, 1968, ch. 398, §§ 1, 2; Laws, 1978, ch. 361, § 1; Laws, 1985, ch. 461, § 2; Laws, 1993, ch. 481, § 3; Laws, 1994, ch. 406, § 1; Laws, 1995, ch. 537, § 1; Laws, 1999, ch. 485, § 1; Laws, 2001, ch. 344, § 1; Laws, 2004, ch. 505, § 9; Laws, 2006, ch. 327, § 1; Laws, 2006, ch. 573, § 3; Laws, 2006, ch. 577, § 2; Laws, 2008, ch. 473, § 1; Laws, 2012, ch. 329, § 5; Laws, 2012, ch. 355, § 1, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 5 of ch. 329, Laws, 2012, effective July 1, 2012, amended this section. Section 1 of ch. 355, Laws, 2012, effective from and after July 1, 2012, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Editor's Note — Laws of 2012, ch. 329, § 11, provides:

“SECTION 11. Sections 1 and 8 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, whichever occurs later; and the remainder of this act shall take effect and be in force from and after July 1, 2012.”

Amendment Notes — The first 2012 amendment, (ch. 329), added (1)(d).

The second 2012 amendment (ch. 355), inserted “notice of renewal of judgment” following “each motion to renew judgment” near the beginning of (1)(b).

§ 25-7-47. Witness fees.

JUDICIAL DECISIONS

1. In general.

Although Miss. R. Civ. P. 68 applied because the jury's award was less than the defendant's rejected offer of settlement, costs were limited to those allowable under Miss. R. Civ. P. 54(d) and, therefore,

the plaintiff could not be taxed with costs for copying, trial materials, and court reporter fees, or for expert witnesses costs in excess of Miss. Code Ann. § 25-7-47. *Hubbard v. Delta Sanitation of Miss.*, 64 So. 3d 547 (Miss. Ct. App. 2011).

CHAPTER 9

Statewide Personnel System

Personnel Administration System 25-9-101

PERSONNEL ADMINISTRATION SYSTEM

SEC.	
25-9-101.	Purpose of chapter.
25-9-115.	State Personnel Board to report to Legislature recommendations for judicial salaries; factors to be considered.
25-9-119.	State personnel director; selection; qualifications; duties.

§ 25-9-101. Purpose of chapter.

It is the purpose of this chapter to establish in the State of Mississippi a system of personnel administration based on sound methods of personnel administration governing the establishment of employment positions, classification of positions and the employment conduct, movement and separation of state employees; to build a career service in government which will attract, select and retain the best persons, with incentives in the form of equal opportunities for initial appointment and promotions in the state service; to establish a system of personnel management that will ensure the effective and efficient use of employees in the state service; and to perform such other duties as may be specified in this chapter or any other law.

SOURCES: Laws, 1980, ch. 303, § 1; Laws, 2012, ch. 329, § 7, eff from and after July 1, 2012.

Editor's Note — Laws of 2012, ch. 329, § 11, provides:

“SECTION 11. Sections 1 and 8 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, whichever occurs later; and the remainder of this act shall take effect and be in force from and after July 1, 2012.”

Amendment Notes — The 2012 amendment added “and to perform such other duties as may be specified in this chapter or any other law” to the end of the section; and made a minor stylistic change.

§ 25-9-107. Definitions.

Editor’s Note — Section 37-4-5 provides that the terms “Junior College Commission” and “State Board for Community and Junior Colleges,” wherever they appear in the laws of Mississippi, shall mean the “Mississippi Community College Board.”

§ 25-9-115. State Personnel Board to report to Legislature recommendations for judicial salaries; factors to be considered.

From and after November 1, 2017, and every four (4) years thereafter, the State Personnel Board shall prepare a written report to the Legislature that examines, evaluates and recommends an adequate level of compensation for the justices of the Supreme Court, the judges of the Court of Appeals, the judges of the chancery and circuit courts, the judges of the county courts, judicial staff attorneys, and law clerks. In preparing the report, the board shall consider all appropriate factors including, but not limited to, comparative judicial, judicial staff attorney, and law clerk salaries in neighboring states and in the Southeast as a whole; comparative judicial, judicial staff attorney, and law clerk salaries in the federal judiciary; salaries of comparable professionals in government, academia, private law practice and the corporate sector; changes in public sector spending; rates of inflation; and the overall economic climate.

SOURCES: Laws, 2012, ch. 329, § 6, effective July 1, 2012.

Editor’s Note — A former § 25-9-115 [Laws, 1980, ch. 303, § 5(2), (3); Laws, 1980 ch. 560, § 30; Laws, 1981, ch. 504, § 11; Laws, 1989, ch. 533, § 2; Laws, 1990, ch. 527, § 1; 1992, ch. 455, § 1; Laws, 1993, ch. 617, § 10; Laws, 1997, ch. 609, § 1; Laws, 1999, ch. 384, § 1; Laws, 2000, ch. 544, § 1, eff from and after June 30, 2000; Repealed by operation of law on June 30, 2003, by a repealer contained in Laws, 2000, ch. 544, § 1, eff from and after June 30, 2000.] pertained to specific duties and functions of the State Personnel Board.

Laws of 2012, ch. 329, § 11, provides:

“SECTION 11. Sections 1 and 8 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, whichever occurs later; and the remainder of this act shall take effect and be in force from and after July 1, 2012.”

§ 25-9-119. State personnel director; selection; qualifications; duties.

(1) There is created the position of the State Personnel Director who shall be selected by the State Personnel Board, with the advice and consent of the Senate. The director shall have at least a Juris Doctor degree from an accredited law school or a master's degree in business administration, personnel management or the equivalent and shall have not less than five (5) years' experience therein. His salary shall be in accordance with the Mississippi Compensation Plan. The State Personnel Director shall serve at the will and pleasure of the State Personnel Board.

(2) The duties and responsibilities of the director shall be:

(a) To serve as executive secretary to the board, to attend meetings as directed by the board and to provide such professional, technical and other supportive assistance as may be required by the board in the performance of its duties;

(b) Consistent with board policy, to administer the operations of the State Personnel System and to otherwise act in the capacity of chief executive officer to the State Personnel Board;

(c) To submit for board approval proposed rules and regulations which shall require a uniform system of personnel administration within all agencies included in this chapter. Such rules and regulations, when approved by the board, shall be binding upon the state departments, agencies and institutions covered by this chapter and shall include provisions for the establishment and maintenance of classification and compensation plans, the conduct of examinations, employee recruiting, employee selection, the certification of eligible persons, appointments, promotions, transfers, demotions, separations, reinstatement, appeals, reports of performance, payroll certification, employee training, vacation and sick leave, compensatory leave, administrative leave, standardized recordkeeping forms and procedures for leave earned, accrued and used, and all other phases of personnel administration. Such rules and regulations shall not be applicable to the emergency hiring of employees by the Public Employees' Retirement System pursuant to Section 25-11-15(7). Copies of the rules and regulations, or modifications thereto, as are approved by the State Personnel Board, shall be provided to the Chairmen of the Accountability, Efficiency and Transparency Committee of the Senate and the Fees and Salaries of Public Officers Committee of the House of Representatives, the Lieutenant Governor and the Governor at least sixty (60) days before their effective date. The respective parties may submit comments to the board regarding such rules and regulations before their effective date;

(i) Compensation plans and modifications thereto promulgated under rules and regulations shall become effective as adopted, upon appropriation therefor by the State Legislature;

(ii) The director and the board shall provide for:

(A) Cost-of-living adjustments;

(B) Salary increases for outstanding performance based upon documented employee productivity and exceptional performance in assigned duties; and

(C) Plans to compensate employees for suggestions which result in improved management in technical or administrative procedures and result in documented cost savings for the state. In certifying promotions, the director shall ensure that an employee's anniversary date remains the same regardless of the date of his promotion;

(d) To submit to the board any proposed legislation as may be necessary to bring existing statutes relating to the administration of public employees into uniformity;

(e) To administer the rules and regulations and all other operational aspects of the State Personnel System and to assure compliance therewith in all the departments, agencies and institutions covered by the State Personnel System;

(f) To appoint and prescribe the duties of the State Personnel System staff, all positions of which shall be included in the state service;

(g) To prepare an annual budget for the board covering all the costs of operating the State Personnel System, including the State Personnel Board, and the costs of administering such federal laws relating to personnel administration as the board may direct, including the Intergovernmental Personnel Act of 1970;

(h) To assist state agencies, departments and institutions in complying with all applicable state and federal statutes and regulations concerning discrimination in employment, personnel administration and related matters;

(i) To recommend procedures for the establishment and abolishment of employment positions within those departments, agencies and institutions not excluded from this chapter; and

(j) To cooperate with appointing authorities in the administration of this chapter in order to promote public service and establish conditions of service which will attract and retain employees of character and capacity and to increase efficiency and economy in governmental departments by the improvement of methods of personnel administration with full recognition of the requirements and needs of management.

SOURCES: Laws, 1980, ch. 303, § 7; Laws, 1981, ch. 504, § 8; Laws, 1989, ch. 533, § 1; Laws, 1993, ch. 617, § 11; Laws, 1999, ch. 383, § 1; Laws, 2013, ch. 387, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment inserted “Juris Doctor degree from an accredited law school or a” in the second sentence of (1); substituted “Chairmen of the Accountability, Efficiency and Transparency Committee” for “Chairmen of the Fee Committee” in the fourth sentence of (1)(c); and made a minor stylistic change.

§ 25-9-127. Prerequisites to dismissal or action adversely affecting compensation or employment status; exceptions; operating state vehicle without license good cause grounds for dismissal; male state employees required to register with selective service.

JUDICIAL DECISIONS

4. Evidence.

Mississippi Employee Appeals Board's (EAB) reinstatement of a Mississippi Department of Corrections employee was affirmed as the employee met his burden under Miss. Code Ann. §§ 25-9-127(1) (Rev. 2010) and 25-9-131(1) (Rev. 2010) of

proving that the alleged acts leading to his termination did not occur. Thus, the EAB's decision was supported by substantial evidence. Miss. Dep't of Corr. v. Pennington, 59 So. 3d 636 (Miss. Ct. App. 2011).

RESEARCH REFERENCES

ALR. Nonsexual Misconduct or Irregularity as Amounting to "Conduct Unbecoming an Officer," Justifying Police Offi-

cer's Demotion or Removal or Suspension from Duty. 19 A.L.R.6th 217.

§ 25-9-131. Proceedings before employee appeals board; judicial review; legislative intent.

JUDICIAL DECISIONS

2. Burden of proof.

Mississippi Employee Appeals Board's (EAB) reinstatement of a Mississippi Department of Corrections employee was affirmed as the employee met his burden under Miss. Code Ann. §§ 25-9-127(1) (Rev. 2010) and 25-9-131(1) (Rev. 2010) of

proving that the alleged acts leading to his termination did not occur. Thus, the EAB's decision was supported by substantial evidence. Miss. Dep't of Corr. v. Pennington, 59 So. 3d 636 (Miss. Ct. App. 2011).

§ 25-9-132. Judicial review of employee appeals board decisions.

JUDICIAL DECISIONS

1. In general.

Substantial evidence supported a decision from the Mississippi Employee Appeal Board that affirmed a state employee's termination after he was convicted of stalking and simple assault as a conviction was a sufficient basis for discharge.

Terry v. Miss. Div. of Medicaid, 75 So. 3d 1100 (Miss. Ct. App. 2011), writ of certiorari denied by 76 So. 3d 169, 2011 Miss. LEXIS 564 (Miss. 2011).

PROTECTION OF PUBLIC EMPLOYEE FROM REPRISAL FOR GIVING INFORMATION TO INVESTIGATIVE BODY OR AGENCY

§ 25-9-173. Prohibition against dismissing or adversely affecting compensation or employment status of public employee for providing information to investigative body; reprisals and retaliatory actions; conditions for recovery of damages and other remedies.

JUDICIAL DECISIONS

2. Protected activity. Employee provided no summary judgment evidence that she reported misconduct by the Mississippi Board of Pharmacy to any of the state agencies. Because the Mississippi whistle blower statutes protected employees from retaliation when they reported improper government- tal action to a state investigative body, Miss. Code Ann. § 25-9-173, the employee’s claims under the Mississippi whistle blower statute were dismissed. Claiborne v. Miss. Bd. of Pharm., — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 93849 (S.D. Miss. Aug. 22, 2011).

CHAPTER 11

Social Security and Public Employees’ Retirement and Disability Benefits

Article 3.	Additional State Retirement and Disability Benefits	25-11-101
Article 5.	Teachers’ Retirement System	25-11-201

ARTICLE 3.

ADDITIONAL STATE RETIREMENT AND DISABILITY BENEFITS.

SEC.	
25-11-103.	Definitions.
25-11-106.	Counties responsible for employer contributions on direct payments to constables covered under Public Employees’ Retirement System; constables responsible for employee contributions; county required to withhold percentage of gross fee income as estimated retirement contributions where constable responsible for both employer and employee contributions on net fee income; constables must make delinquent payments or elect not to and forfeit service credit.
25-11-106.1.	Counties responsible for employer contributions on direct payments to chancery or circuit clerks covered under Public Employees’ Retirement System; chancery or circuit clerks responsible for employee contributions; chancery or circuit clerk delinquent contributions; irrevocable forfeiture of service credit for any period for which appropriate employee and employer contributions not made.
25-11-111.	Superannuation retirement.
25-11-112.	Additional annual payment to retirees and beneficiaries.
25-11-113.	Disability retirement.
25-11-114.	Retirement allowance for death before retirement or death or disability in line of duty.

- 25-11-115. Options.
- 25-11-121. Investments.
- 25-11-123. Crediting of assets; financing.
- 25-11-125. Employer contributions for certain fee paid public officers.

§ 25-11-103. Definitions.

The following words and phrases as used in Articles 1 and 3, unless a different meaning is plainly required by the context, have the following meanings:

(a) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member and credited to his or her individual account in the annuity savings account, together with regular interest as provided in Section 25-11-123.

(b) "Actuarial cost" means the amount of funds presently required to provide future benefits as determined by the board based on applicable tables and formulas provided by the actuary.

(c) "Actuarial equivalent" means a benefit of equal value to the accumulated contributions, annuity or benefit, as the case may be, when computed upon the basis of such mortality tables as adopted by the board of trustees, and regular interest.

(d) "Actuarial tables" means such tables of mortality and rates of interest as adopted by the board in accordance with the recommendation of the actuary.

(e) "Agency" means any governmental body employing persons in the state service.

(f) "Average compensation" means the average of the four (4) highest years of earned compensation reported for an employee in a fiscal or calendar year period, or combination thereof that do not overlap, or the last forty-eight (48) consecutive months of earned compensation reported for an employee. The four (4) years need not be successive or joined years of service. In computing the average compensation for retirement, disability or survivor benefits, any amount lawfully paid in a lump sum for personal leave or major medical leave shall be included in the calculation to the extent that the amount does not exceed an amount that is equal to thirty (30) days of earned compensation and to the extent that it does not cause the employee's earned compensation to exceed the maximum reportable amount specified in paragraph (k) of this section; however, this thirty-day limitation shall not prevent the inclusion in the calculation of leave earned under federal regulations before July 1, 1976, and frozen as of that date as referred to in Section 25-3-99. In computing the average compensation, no amounts shall be used that are in excess of the amount on which contributions were required and paid, and no nontaxable amounts paid by the employer for health or life insurance premiums for the employee shall be used. If any member who is or has been granted any increase in annual salary or compensation of more than eight percent (8%) retires within twenty-four (24) months from the date that the increase becomes effective, then the

board shall exclude that part of the increase in salary or compensation that exceeds eight percent (8%) in calculating that member's average compensation for retirement purposes. The board may enforce this provision by rule or regulation. However, increases in compensation in excess of eight percent (8%) per year granted within twenty-four (24) months of the date of retirement may be included in the calculation of average compensation if satisfactory proof is presented to the board showing that the increase in compensation was the result of an actual change in the position held or services rendered, or that the compensation increase was authorized by the State Personnel Board or was increased as a result of statutory enactment, and the employer furnishes an affidavit stating that the increase granted within the last twenty-four (24) months was not contingent on a promise or agreement of the employee to retire. Nothing in Section 25-3-31 shall affect the calculation of the average compensation of any member for the purposes of this article. The average compensation of any member who retires before July 1, 1992, shall not exceed the annual salary of the Governor.

(g) "Beneficiary" means any person entitled to receive a retirement allowance, an annuity or other benefit as provided by Articles 1 and 3. The term "beneficiary" may also include an organization, estate, trust or entity; however, a beneficiary designated or entitled to receive monthly payments under an optional settlement based on life contingency or under a statutory monthly benefit may only be a natural person. In the event of the death before retirement of any member who became a member of the system before July 1, 2007, and whose spouse and/or children are not entitled to a retirement allowance on the basis that the member has less than four (4) years of service credit, or who became a member of the system on or after July 1, 2007, and whose spouse and/or children are not entitled to a retirement allowance on the basis that the member has less than eight (8) years of service credit, and/or has not been married for a minimum of one (1) year or the spouse has waived his or her entitlement to a retirement allowance under Section 25-11-114, the lawful spouse of a member at the time of the death of the member shall be the beneficiary of the member unless the member has designated another beneficiary after the date of marriage in writing, and filed that writing in the office of the executive director of the board of trustees. No designation or change of beneficiary shall be made in any other manner.

(h) "Board" means the board of trustees provided in Section 25-11-15 to administer the retirement system created under this article.

(i) "Creditable service" means "prior service," "retroactive service" and all lawfully credited unused leave not exceeding the accrual rates and limitations provided in Section 25-3-91 et seq., as of the date of withdrawal from service plus "membership service" and other service for which credit is allowable as provided in Section 25-11-109. Except to limit creditable service reported to the system for the purpose of computing an employee's retirement allowance or annuity or benefits provided in this article, nothing in this paragraph shall limit or otherwise restrict the power of the governing

authority of a municipality or other political subdivision of the state to adopt such vacation and sick leave policies as it deems necessary.

(j) “Child” means either a natural child of the member, a child that has been made a child of the member by applicable court action before the death of the member, or a child under the permanent care of the member at the time of the latter’s death, which permanent care status shall be determined by evidence satisfactory to the board.

(k) “Earned compensation” means the full amount earned during a fiscal year by an employee not to exceed the employee compensation limit set pursuant to Section 401(a)(17) of the Internal Revenue Code for the calendar year in which the fiscal year begins and proportionately for less than one (1) year of service. Except as otherwise provided in this paragraph, the value of maintenance furnished to an employee shall not be included in earned compensation. Earned compensation shall not include any amounts paid by the employer for health or life insurance premiums for an employee. Earned compensation shall be limited to the regular periodic compensation paid, exclusive of litigation fees, bond fees, performance-based incentive payments, and other similar extraordinary nonrecurring payments. In addition, any member in a covered position, as defined by Public Employees’ Retirement System laws and regulations, who is also employed by another covered agency or political subdivision shall have the earnings of that additional employment reported to the Public Employees’ Retirement System regardless of whether the additional employment is sufficient in itself to be a covered position. In addition, computation of earned compensation shall be governed by the following:

(i) In the case of constables, the net earnings from their office after deduction of expenses shall apply, except that in no case shall earned compensation be less than the total direct payments made by the state or governmental subdivisions to the official.

(ii) In the case of chancery or circuit clerks, the net earnings from their office after deduction of expenses shall apply as expressed in Section 25-11-123(f)(4).

(iii) In the case of members of the State Legislature, all remuneration or amounts paid, except mileage allowance, shall apply.

(iv) The amount by which an eligible employee’s salary is reduced under a salary reduction agreement authorized under Section 25-17-5 shall be included as earned compensation under this paragraph, provided this inclusion does not conflict with federal law, including federal regulations and federal administrative interpretations under the federal law, pertaining to the Federal Insurance Contributions Act or to Internal Revenue Code Section 125 cafeteria plans.

(v) Compensation in addition to an employee’s base salary that is paid to the employee under the vacation and sick leave policies of a municipality or other political subdivision of the state that employs him or her that exceeds the maximums authorized by Section 25-3-91 et seq. shall be excluded from the calculation of earned compensation under this article.

(vi) The maximum salary applicable for retirement purposes before July 1, 1992, shall be the salary of the Governor.

(vii) Nothing in Section 25-3-31 shall affect the determination of the earned compensation of any member for the purposes of this article.

(viii) The value of maintenance furnished to an employee before July 1, 2013, for which the proper amount of employer and employee contributions have been paid, shall be included in earned compensation. From and after July 1, 2013, the value of maintenance furnished to an employee shall be reported as earned compensation only if the proper amount of employer and employee contributions have been paid on the maintenance and the employee was receiving maintenance and having maintenance reported to the system as of June 30, 2013. The value of maintenance when not paid in money shall be fixed by the employing state agency, and, in case of doubt, by the board of trustees as defined in Section 25-11-15.

(ix) Except as otherwise provided in this paragraph, the value of any in-kind benefits provided by the employer shall not be included in earned compensation. As used in this subparagraph, “in-kind benefits” shall include, but not be limited to, group life insurance premiums, health or dental insurance premiums, nonpaid major medical and personal leave, employer contributions for social security and retirement, tuition reimbursement or educational funding, day care or transportation benefits.

(l) “Employee” means any person legally occupying a position in the state service, and shall include the employees of the retirement system created under this article.

(m) “Employer” means the State of Mississippi or any of its departments, agencies or subdivisions from which any employee receives his or her compensation.

(n) “Executive director” means the secretary to the board of trustees, as provided in Section 25-11-15(9), and the administrator of the Public Employees’ Retirement System and all systems under the management of the board of trustees. Wherever the term “Executive Secretary of the Public Employees’ Retirement System” or “executive secretary” appears in this article or in any other provision of law, it shall be construed to mean the Executive Director of the Public Employees’ Retirement System.

(o) “Fiscal year” means the period beginning on July 1 of any year and ending on June 30 of the next succeeding year.

(p) “Medical board” means the board of physicians or any governmental or nongovernmental disability determination service designated by the board of trustees that is qualified to make disability determinations as provided for in Section 25-11-119.

(q) “Member” means any person included in the membership of the system as provided in Section 25-11-105. For purposes of Sections 25-11-103, 25-11-105, 25-11-109, 25-11-111, 25-11-113, 25-11-114, 25-11-115 and 25-11-117, if a member of the system withdrew from state service and received a refund of the amount of the accumulated contributions to the credit of the member in the annuity savings account before July 1, 2007, and the person

reenters state service and becomes a member of the system again on or after July 1, 2007, and repays all or part of the amount received as a refund and interest in order to receive creditable service for service rendered before July 1, 2007, the member shall be considered to have become a member of the system on or after July 1, 2007, subject to the eight-year membership service requirement, as applicable in those sections. For purposes of Sections 25-11-103, 25-11-111, 25-11-114 and 25-11-115, if a member of the system withdrew from state service and received a refund of the amount of the accumulated contributions to the credit of the member in the annuity savings account before July 1, 2011, and the person reenters state service and becomes a member of the system again on or after July 1, 2011, and repays all or part of the amount received as a refund and interest in order to receive creditable service for service rendered before July 1, 2011, the member shall be considered to have become a member of the system on or after July 1, 2011.

(r) "Membership service" means service as an employee in a covered position rendered while a contributing member of the retirement system.

(s) "Position" means any office or any employment in the state service, or two (2) or more of them, the duties of which call for services to be rendered by one (1) person, including positions jointly employed by federal and state agencies administering federal and state funds. The employer shall determine upon initial employment and during the course of employment of an employee who does not meet the criteria for coverage in the Public Employees' Retirement System based on the position held, whether the employee is or becomes eligible for coverage in the Public Employees' Retirement System based upon any other employment in a covered agency or political subdivision. If or when the employee meets the eligibility criteria for coverage in the other position, then the employer must withhold contributions and report wages from the noncovered position in accordance with the provisions for reporting of earned compensation. Failure to deduct and report those contributions shall not relieve the employee or employer of liability thereof. The board shall adopt such rules and regulations as necessary to implement and enforce this provision.

(t) "Prior service" means:

(i) For persons who became members of the system before July 1, 2007, service rendered before February 1, 1953, for which credit is allowable under Sections 25-11-105 and 25-11-109, and which shall allow prior service for any person who is now or becomes a member of the Public Employees' Retirement System and who does contribute to the system for a minimum period of four (4) years.

(ii) For persons who became members of the system on or after July 1, 2007, service rendered before February 1, 1953, for which credit is allowable under Sections 25-11-105 and 25-11-109, and which shall allow prior service for any person who is now or becomes a member of the Public Employees' Retirement System and who does contribute to the system for a minimum period of eight (8) years.

(u) “Regular interest” means interest compounded annually at such a rate as determined by the board in accordance with Section 25-11-121.

(v) “Retirement allowance” means an annuity for life as provided in this article, payable each year in twelve (12) equal monthly installments beginning as of the date fixed by the board. The retirement allowance shall be calculated in accordance with Section 25-11-111. However, any spouse who received a spouse retirement benefit in accordance with Section 25-11-111(d) before March 31, 1971, and those benefits were terminated because of eligibility for a social security benefit, may again receive his or her spouse retirement benefit from and after making application with the board of trustees to reinstate the spouse retirement benefit.

(w) “Retroactive service” means service rendered after February 1, 1953, for which credit is allowable under Section 25-11-105(b) and Section 25-11-105(k).

(x) “System” means the Public Employees’ Retirement System of Mississippi established and described in Section 25-11-101.

(y) “State” means the State of Mississippi or any political subdivision thereof or instrumentality of the state.

(z) “State service” means all offices and positions of trust or employment in the employ of the state, or any political subdivision or instrumentality of the state, that elect to participate as provided by Section 25-11-105(f), including the position of elected or fee officials of the counties and their deputies and employees performing public services or any department, independent agency, board or commission thereof, and also includes all offices and positions of trust or employment in the employ of joint state and federal agencies administering state and federal funds and service rendered by employees of the public schools. Effective July 1, 1973, all nonprofessional public school employees, such as bus drivers, janitors, maids, maintenance workers and cafeteria employees, shall have the option to become members in accordance with Section 25-11-105(b), and shall be eligible to receive credit for services before July 1, 1973, provided that the contributions and interest are paid by the employee in accordance with that section; in addition, the county or municipal separate school district may pay the employer contribution and pro rata share of interest of the retroactive service from available funds. From and after July 1, 1998, retroactive service credit shall be purchased at the actuarial cost in accordance with Section 25-11-105(b).

(aa) “Withdrawal from service” or “termination from service” means complete severance of employment in the state service of any member by resignation, dismissal or discharge.

(bb) The masculine pronoun, wherever used, includes the feminine pronoun.

SOURCES: Codes, 1942, § 7446-12; Laws, 1952, ch. 299, § 12; Laws, 1958, ch. 547, § 1; Laws, 1960, ch. 453, § 1; Laws, 1968, ch. 578, § 1; Laws, 1971, ch. 478, § 1; Laws, 1973, ch. 450, § 5; Laws, 1977, ch. 450, § 2; Laws, 1980, ch. 481, § 1; Laws, 1984, ch. 307, § 6; Laws, 1984, ch. 496, § 1; Laws, 1985, ch. 504, § 1;

Laws, 1986, ch. 513, § 7; brought forward without change, Laws, 1987, ch. 345, § 7; Laws, 1989, ch. 583, § 1; Laws, 1991, ch. 513, § 2; Laws, 1992, ch. 576, § 1; Laws, 1993, ch. 617, § 2; Laws, 1994, ch. 601, § 1; Laws, 1995, ch. 624, § 1; Laws, 1996, ch. 472, § 1; Laws, 1999, ch. 544, § 17; Laws, 2000, ch. 628, § 6; Laws, 2002, ch. 627, § 5; Laws, 2004, ch. 561, § 4; Laws, 2007, ch. 407, § 1; Laws, 2008, ch. 359, § 2; Laws, 2010, ch. 389, § 2; Laws, 2010, ch. 528, § 1; Laws, 2013, ch. 414, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment in (k), deleted “including any maintenance furnished” following “fiscal year by an employee” at the beginning of the first sentence, rewrote the second sentence, which formerly read: “The value of that maintenance when not paid in money shall be fixed by the employing state agency, and, in case of doubt, by the board of trustees as defined in Section 25-11-15,” in the third sentence, deleted “nontaxable” following “shall not include,” in the fourth sentence, deleted “In any case” from the beginning, and inserted “performance-based incentive payments,” and added (viii) and (ix); and made minor stylistic changes.

§ 25-11-106. Counties responsible for employer contributions on direct payments to constables covered under Public Employees’ Retirement System; constables responsible for employee contributions; county required to withhold percentage of gross fee income as estimated retirement contributions where constable responsible for both employer and employee contributions on net fee income; constables must make delinquent payments or elect not to and forfeit service credit.

(1)(a) Any constable in office as of July 1, 2005, whose position is covered in the Public Employees’ Retirement System by virtue of a plan submitted and approved under Section 25-11-105(f) will remain a member of the Public Employees’ Retirement System.

(b)(i) The county is responsible for employer contributions on all direct payments to the constable from the county.

(ii) Except as otherwise provided in subparagraph (iii) of this paragraph, the constable is responsible for the employee contributions on direct payments to the constable from the county and both the employer and employee share of contributions on his or her net fee income.

(iii) For contributions required for calendar year 2014 and any calendar year thereafter, the county may elect, by majority vote of the board of supervisors spread upon its minutes, to be responsible for the employer share of contributions on the net fee income of its constables. If the county elects to be responsible for employer contributions under this provision, the election shall be irrevocable until the board of supervisors takes office for the next succeeding term of office at which time the board may elect whether to continue the election. Notice shall be given to the executive director of any election made under this subparagraph (iii) within five (5) days after the election is made.

(c) From and after January 1, 2006, in cases in which the constable is responsible for both the employer and employee contributions on net fee

income, the county shall withhold from fee income due to the constable a percentage amount, as set by the board, of the gross fee income paid to the constable as estimated retirement contributions and shall remit that amount to the system. Not later than the date on which the annual report of earnings is due to be filed as provided in Section 7-3-45, the constable shall submit to the system a copy of the earnings record and make complete payment of any required contributions on net earnings from his or her office, but not less than the contributions due on the governmental treasuries paid by the county in the prior calendar year. If the constable fails to make full payment of contributions at the time required, the system shall certify the delinquency to the county and the county shall withhold any and all payments and fees due to the constable until such time as his or her retirement contributions are fully reported and made.

(2) Any current or former constable for whom appropriate employer and employee contributions and interest on all fees and county income from covered service before January 1, 2006, have not been made shall do one (1) of the following:

(a) Make the required payments or enter into an irrevocable agreement by not later than December 31, 2005, to make the payments for all calendar years before January 1, 2006. Contributions and interest due and owing for covered services before January 1, 2006, must be received by the system not later than April 15, 2007, or such date as set forth in the payment schedule mutually adopted by the member and the system.

(b) Elect, before December 31, 2005, not to pay delinquent employee and employer contributions and applicable interest for service as a constable before January 1, 2006. By making this election, the current or former constable shall irrevocably forfeit that service credit so as to be relieved of the liability for additional employer and employee contributions and applicable interest.

(3) Where a current or former constable fails to make required contributions as provided in subsection (2)(a) of this section, or where a current or former constable irrevocably elects to forfeit service credit as provided in subsection (2)(b) of this section, all employer and employee contributions previously paid on that service shall be credited to the county as the reporting entity to be distributed as appropriate between the county and the constable or former constable. No further contributions shall be due on that past service and any credit on that past service shall be removed from the member's record and may not be reinstated at any time in the future.

SOURCES: Laws, 2005, ch. 439, § 1; Laws, 2006, ch. 357, § 1; Laws, 2013, ch. 488, § 1, eff from and after Oct. 1, 2013.

Amendment Notes — The 2013 amendment in (1)(b)(ii), added the exception, at the beginning, substituted “direct payments” for “those payments,” and added “to the constable from the county and both the employer and employee share of contributions on his or her net fee income” at the end; added (1)(b)(iii); in (1)(c), substituted “as provided in Section 7-3-45” for “with the Secretary of State” in the second sentence,

inserted "or her" twice, and inserted "of contributions" in the last sentence; and made minor stylistic changes.

§ 25-11-106.1. Counties responsible for employer contributions on direct payments to chancery or circuit clerks covered under Public Employees' Retirement System; chancery or circuit clerks responsible for employee contributions; chancery or circuit clerk delinquent contributions; irrevocable forfeiture of service credit for any period for which appropriate employee and employer contributions not made.

(1) Any chancery or circuit clerk in office as of January 1, 2011, whose position is covered in the Public Employees' Retirement System by virtue of a plan submitted and approved under Section 25-11-105(f) will remain a member of the Public Employees' Retirement System.

(2)(a)(i) The county is responsible for employer contributions on net income attributable to direct treasury or county payroll income paid to the chancery or circuit clerk from the county.

(ii) Except as otherwise provided in this subsection (2), the chancery or circuit clerk is responsible for the employee contributions on net income attributable to direct treasury or county payroll income paid to the clerk and both the employee and employer share of contributions on the proportionate share of net income attributable to fees.

(iii) For contributions required for calendar year 2011 and any calendar year thereafter, the county may elect, by majority vote of the board of supervisors spread upon its minutes, to be responsible for the employer share of contributions on the proportionate share of net income of the chancery and circuit clerk attributable to fees. If the county elects to be responsible for employer contributions under this provision, the election shall be irrevocable until the board of supervisors takes office for the next succeeding term of office at which time the board may elect whether to continue the election. Notice shall be given to the executive director of any election made under this subparagraph (iii) within five (5) days after the election is made.

(b) Not later than the date on which the annual report of earnings is due to be filed with the Office of the State Auditor, the chancery or circuit clerk shall submit to the system a copy of the earnings record and make complete payment of required contributions on net income from his or her office; however, in no event shall the contributions be less than the contributions due on the governmental treasuries paid by the county in the prior calendar year.

(c) If the chancery or circuit clerk fails to make full payment of contributions as required for calendar year 2010 or any calendar year thereafter, the system shall certify the delinquency to the county and the county shall withhold any and all payments and fees, including accrued

interest, due to the chancery or circuit clerk in a manner as prescribed by board regulations until such time as the total amount of his or her delinquent contributions are withheld and pay the amount so withheld to the system.

(3) Any current or former chancery or circuit clerk for whom appropriate employee and employer contributions and interest on all fees and county income from covered service before January 1, 2010, have not been made shall do one (1) of the following:

(a) Pay to the system the required contributions and interest by not later than December 31, 2011. Failure to pay the required contributions and interest by December 31, 2011, shall constitute an irrevocable election to forfeit service credit for any period for which contributions are delinquent. Upon such forfeiture, the chancery or circuit clerk shall be relieved of the liability for additional employee and employer contributions and applicable interest for covered service before January 1, 2010.

(b) Elect, before December 31, 2011, not to pay delinquent employee and employer contributions and applicable interest for service as a chancery or circuit clerk before January 1, 2010. By making this election, the current or former chancery or circuit clerk shall irrevocably forfeit service credit for any period for which contributions are delinquent and shall not be liable for employee and employer contributions and applicable interest for covered service before January 1, 2010.

(4) If a current or former chancery or circuit clerk fails to make required contributions as provided in subsection (3)(a) of this section or elects to forfeit service credit as provided in subsection (3)(b) of this section, all employee and employer contributions previously paid on that service shall be credited to the county as the reporting entity to be distributed as appropriate between the county and the chancery or circuit clerk or former chancery or circuit clerk. No further contributions shall be due on that past service and any credit on that past service shall be removed from the member's record and may not be reinstated at any time in the future.

SOURCES: Laws, 2011, ch. 402, § 1, eff from and after passage (approved Mar. 14, 2011.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference near the beginning of (2)(a)(ii) by substituting "(ii) Except as otherwise provided in this subsection (2)" for "(ii) Except as otherwise provided in this paragraph (2)." The Joint Committee ratified the correction at its July 13, 2011, meeting.

§ 25-11-111. Superannuation retirement.

(a)(1) Any member who became a member of the system before July 1, 2007, upon withdrawal from service upon or after attainment of the age of sixty (60) years who has completed at least four (4) years of membership service, or any member who became a member of the system before July 1,

2011, upon withdrawal from service regardless of age who has completed at least twenty-five (25) years of creditable service, shall be entitled to receive a retirement allowance, which shall begin on the first of the month following the date the member's application for the allowance is received by the board, but in no event before withdrawal from service.

(2) Any member who became a member of the system on or after July 1, 2007, upon withdrawal from service upon or after attainment of the age of sixty (60) years who has completed at least eight (8) years of membership service, or any member who became a member of the system on or after July 1, 2011, upon withdrawal from service regardless of age who has completed at least thirty (30) years of creditable service, shall be entitled to receive a retirement allowance, which shall begin on the first of the month following the date the member's application for the allowance is received by the board, but in no event before withdrawal from service.

(b)(1) Any member who became a member of the system before July 1, 2007, whose withdrawal from service occurs before attaining the age of sixty (60) years who has completed four (4) or more years of membership service and has not received a refund of his accumulated contributions, shall be entitled to receive a retirement allowance, beginning upon his attaining the age of sixty (60) years, of the amount earned and accrued at the date of withdrawal from service.

(2) Any member who became a member of the system on or after July 1, 2007, whose withdrawal from service occurs before attaining the age of sixty (60) years who has completed eight (8) or more years of membership service and has not received a refund of his accumulated contributions, shall be entitled to receive a retirement allowance, beginning upon his attaining the age of sixty (60) years, of the amount earned and accrued at the date of withdrawal from service.

(c) Any member in service who has qualified for retirement benefits may select any optional method of settlement of retirement benefits by notifying the Executive Director of the Board of Trustees of the Public Employees' Retirement System in writing, on a form prescribed by the board, of the option he has selected and by naming the beneficiary of the option and furnishing necessary proof of age. The option, once selected, may be changed at any time before actual retirement or death, but upon the death or retirement of the member, the optional settlement shall be placed in effect upon proper notification to the executive director.

(d) Any member who became a member of the system before July 1, 2011, shall be entitled to an annual retirement allowance which shall consist of:

(1) A member's annuity, which shall be the actuarial equivalent of the accumulated contributions of the member at the time of retirement computed according to the actuarial table in use by the system; and

(2) An employer's annuity, which, together with the member's annuity provided above, shall be equal to two percent (2%) of the average compensation for each year of service up to and including twenty-five (25) years of creditable service, and two and one-half percent (2-½%) of the average

compensation for each year of service exceeding twenty-five (25) years of creditable service.

(3) Any retired member or beneficiary thereof who was eligible to receive a retirement allowance before July 1, 1991, and who is still receiving a retirement allowance on July 1, 1992, shall receive an increase in the annual retirement allowance of the retired member equal to one-eighth of one percent ($\frac{1}{8}$ of 1%) of the average compensation for each year of state service in excess of twenty-five (25) years of membership service up to and including thirty (30) years. The maximum increase shall be five-eighths of one percent ($\frac{5}{8}$ of 1%). In no case shall a member who has been retired before July 1, 1987, receive less than Ten Dollars (\$10.00) per month for each year of creditable service and proportionately for each quarter year thereof. Persons retired on or after July 1, 1987, shall receive at least Ten Dollars (\$10.00) per month for each year of service and proportionately for each quarter year thereof reduced for the option selected. However, such Ten Dollars (\$10.00) minimum per month for each year of creditable service shall not apply to a retirement allowance computed under Section 25-11-114 based on a percentage of the member's average compensation.

(e) Any member who became a member of the system on or after July 1, 2011, shall be entitled to an annual retirement allowance which shall consist of:

(1) A member's annuity, which shall be the actuarial equivalent of the accumulated contributions of the member at the time of retirement computed according to the actuarial table in use by the system; and

(2) An employer's annuity, which, together with the member's annuity provided above, shall be equal to two percent (2%) of the average compensation for each year of service up to and including thirty (30) years of creditable service, and two and one-half percent ($2\frac{1}{2}\%$) of average compensation for each year of service exceeding thirty (30) years of creditable service.

(f) Any member who became a member of the system on or after July 1, 2011, upon withdrawal from service upon or after attaining the age of sixty (60) years who has completed at least eight (8) years of membership service, or any such member upon withdrawal from service regardless of age who has completed at least thirty (30) years of creditable service, shall be entitled to receive a retirement allowance computed in accordance with the formula set forth in subsection (e) of this section. In the case of the retirement of any member who has attained age sixty (60) but who has not completed at least thirty (30) years of creditable service, the retirement allowance shall be computed in accordance with the formula set forth in subsection (e) of this section except that the total annual retirement allowance shall be reduced by an actuarial equivalent factor for each year of creditable service below thirty (30) years or the number of years in age that the member is below age 65, whichever is less.

(g) No member, except members excluded by the Age Discrimination in Employment Act Amendments of 1986 (Public Law 99-592), under either Article 1 or Article 3 in state service shall be required to retire because of age.

(h) No payment on account of any benefit granted under the provisions of this section shall become effective or begin to accrue until January 1, 1953.

(i)(1) A retiree or beneficiary may, on a form prescribed by and filed with the retirement system, irrevocably waive all or a portion of any benefits from the retirement system to which the retiree or beneficiary is entitled. The waiver shall be binding on the heirs and assigns of any retiree or beneficiary and the same must agree to forever hold harmless the Public Employees' Retirement System of Mississippi from any claim to the waived retirement benefits.

(2) Any waiver under this subsection shall apply only to the person executing the waiver. A beneficiary shall be entitled to benefits according to the option selected by the member at the time of retirement. However, a beneficiary may, at the option of the beneficiary, execute a waiver of benefits under this subsection.

(3) The retirement system shall retain in the annuity reserve account amounts that are not used to pay benefits because of a waiver executed under this subsection.

(4) The board of trustees may provide rules and regulations for the administration of waivers under this subsection.

SOURCES: Codes, 1942, § 7446-15; Laws, 1952, ch. 299, § 15; Laws, 1956, ch. 347; Laws, 1960, ch. 453, § 3; Laws, 1966, ch. 618, § 1; Laws, 1968, ch. 578, § 2; Laws, 1971, ch. 478, § 3; Laws, 1973, ch. 450, § 3; Laws, 1975, ch. 511; Laws, 1980, ch. 481, § 4; Laws, 1985, ch. 504, § 2; Laws, 1986, ch. 473; Laws, 1987, ch. 325, § 1; Laws, 1989, ch. 303, § 1; Laws, 1991, ch. 513, § 4; Laws, 1999, ch. 590, § 1; Laws, 2000, ch. 628, § 7; Laws, 2007, ch. 407, § 4; Laws, 2010, ch. 389, § 1; Laws, 2011, ch. 469, § 1, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 469, § 7, provides:

"SECTION 7. Sections 5 and 6 of this act shall take effect and be in force from and after its passage [approved March 30, 2011], and the remainder of this act shall take effect and be in force from and after July 1, 2011."

Amendment Notes — The 2011 amendment in (d), substituted "Any member who became a member of the system before July 1, 2011, shall be entitled to an annual retirement allowance which" for "The annual amount of the retirement allowance"; added (e) and (f); and redesignated former (e) through (g) as (g) through (i).

§ 25-11-112. Additional annual payment to retirees and beneficiaries.

(1) Any member who is receiving a retirement allowance for service or disability retirement, or any beneficiary thereof, who has received a monthly benefit for at least one (1) full fiscal year, shall be eligible to receive an additional benefit, on December 1 or July 1 of the year as provided in subsection (3) of this section, equal to an amount calculated under paragraph (a) or (b) below:

(a) For any member who became a member of the system before July 1, 2011, the sum of:

(i) An amount equal to three percent (3%) of the annual retirement allowance multiplied by the number of full fiscal years in retirement before the end of the fiscal year in which the member reaches age fifty-five (55), plus

(ii) An additional amount equal to three percent (3%) compounded by the number of full fiscal years in retirement beginning with the fiscal year in which the member reaches age fifty-five (55), multiplied by the amount of the annual retirement allowance.

(b) For any member who became a member of the system on or after July 1, 2011, the sum of:

(i) An amount equal to three percent (3%) of the annual retirement allowance multiplied by the number of full fiscal years in retirement before the end of the fiscal year in which the member reaches age sixty (60), plus

(ii) An additional amount equal to three percent (3%) compounded by the number of full fiscal years in retirement beginning with the fiscal year in which the member reaches age sixty (60), multiplied by the amount of the annual retirement allowance.

(2) The calculation of the beneficiary's additional benefit under subsection (1)(a) or (b) of this section shall be based on the member's age and full fiscal years in retirement as if the member had lived.

(3)(a) The additional benefit provided for under this section shall be paid in one (1) payment in December of each year to those persons who are receiving a retirement allowance on December 1 of that year, unless an election is made under this subsection. However, if a retiree who is receiving a retirement allowance that will terminate upon the retiree's death is receiving the additional benefit in one (1) payment and dies on or after July 1 but before December 1, the beneficiary designated on the retirement application, if any, shall receive in a single payment a fractional part of the additional benefit based on the number of months in which a retirement allowance was received during the fiscal year. Likewise, if a retiree is receiving a retirement allowance that will terminate upon his or her death in two (2) to six (6) monthly installments, any remaining payments of the additional benefit will be paid in a lump sum to the beneficiary designated on the application, or if none, pursuant to Section 25-11-117.1(1). Any similar remaining payments of additional benefits payable under this section to a deceased beneficiary who was receiving a monthly benefit shall be payable in accordance with the provisions of Section 25-11-117.1(2). If the additional monthly benefit is being received in one (1) payment, the additional benefit shall also be prorated based on the number of months in which a retirement allowance was received during the fiscal year when (i) the monthly benefit payable to a beneficiary terminates due to the expiration of an option, remarriage or cessation of dependent status or due to the retiree's return to covered employment, and (ii) the monthly benefit terminates on or after July 1 and before December 1. The board may, in its discretion, allow a retired member or a beneficiary thereof who is receiving the additional annual

payment in the manner provided for in this paragraph to change the manner in which the additional annual payment is received to that provided for in paragraph (b) of this subsection if the retired member or beneficiary submits satisfactory documentation that the continued receipt of the additional annual payment as provided for in this paragraph will cause a financial hardship to the retired member or beneficiary.

(b) Retired members or beneficiaries thereof who on July 1, 1999, or July 1 of any fiscal year thereafter, are receiving a retirement allowance, may elect by an irrevocable agreement in writing filed in the Office of the Public Employees' Retirement System no less than thirty (30) days before July 1 of the appropriate year, to begin receiving the additional benefit provided for under this section in twelve (12) equal monthly installments beginning July 1, 1999, or July 1 of any fiscal year thereafter. This irrevocable agreement shall be binding on the member and subsequent beneficiaries. Payment of those monthly installments shall not extend beyond the month in which a retirement allowance is due and payable. The board may, in its discretion, allow a retired member or a beneficiary thereof who is receiving the additional annual payment in the manner provided for in this paragraph to change the manner in which the additional annual payment is received to that provided for in paragraph (a) of this subsection if the retired member or beneficiary submits satisfactory documentation that the continued receipt of the additional annual payment as provided for in this paragraph will cause a financial hardship to the retired member or beneficiary.

(4) The additional payment or payments provided for under this section are for the fiscal year in which they are paid.

(5)(a) The amount provided for under subsection (1)(a)(ii) of this section is calculated using the following formula:

$$[(1.03)^n - 1] \times [\text{annual retirement allowance}],$$

where n is the number of full fiscal years in retirement beginning with the fiscal year in which the member reaches age fifty-five (55).

(b) The amount provided for under subsection (1)(b)(ii) of this section is calculated using the following formula:

$$[(1.03)^n - 1] \times [\text{annual retirement allowance}],$$

where n is the number of full fiscal years in retirement beginning with the fiscal year in which the member reaches age sixty (60).

(6) Any retired member or beneficiary thereof who has previously elected to receive the additional annual payment in monthly installments may elect, upon application on a form prescribed by the board of trustees, to have that payment made in one (1) additional payment each year. This written election must be filed in the Office of the Public Employees' Retirement System before June 1, 2000, and shall be effective for the fiscal year beginning July 1, 2000.

(7) In the event of death of a retired member or a beneficiary thereof who is receiving the additional annual payment in two (2) to six (6) monthly

installments pursuant to an election made before July 1, 1999, and who would otherwise be eligible to receive the additional benefit provided for under this section in one (1) payment in December of the current fiscal year, any remaining amounts shall be paid in a lump sum to the designated beneficiary.

(8) When a member retires after July 1 and has previously received a retirement allowance for one or more full fiscal years, the retired member shall be eligible immediately for the additional benefit. The additional benefit shall be based on the current retirement allowance and the number of full fiscal years in retirement and shall be prorated and paid in monthly installments based on the number of months a retirement allowance is paid during the fiscal year.

SOURCES: Laws, 1980, ch. 481, § 5; Laws, 1982, ch. 382; Laws, 1984, ch. 310; Laws, 1985, ch. 504, § 3; Laws, 1990, ch. 400, § 1; Laws, 1994, ch. 601, § 4; Laws, 1999, ch. 590, § 2; Laws, 2000, ch. 628, § 12; Laws, 2002, ch. 627, § 8; Laws, 2011, ch. 469, § 2, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 469, § 7, provides:

“SECTION 7. Sections 5 and 6 of this act shall take effect and be in force from and after its passage [approved March 30, 2011], and the remainder of this act shall take effect and be in force from and after July 1, 2011.”

Amendment Notes — The 2011 amendment substituted “an amount” for “the greater of the amounts” in (1); deleted former (1)(a); redesignated former (1)(b) as (1)(a) and inserted “For any member who became a member of the system before July 1, 2011”; added (1)(b) and (5)(b); and made minor stylistic changes.

§ 25-11-113. Disability retirement.

(1)(a) Upon the application of a member or his employer, any active member in state service who became a member of the system before July 1, 2007, and who has at least four (4) years of membership service credit, or any active member in state service who became a member of the system on or after July 1, 2007, who has at least eight (8) years of membership service credit, may be retired by the board of trustees on the first of the month following the date of filing the application on a disability retirement allowance, but in no event shall the disability retirement allowance begin before termination of state service, provided that the medical board, after an evaluation of medical evidence that may or may not include an actual physical examination by the medical board, certifies that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired; however, the board of trustees may accept a disability medical determination from the Social Security Administration in lieu of a certification from the medical board. For the purposes of disability determination, the medical board shall apply the following definition of disability: the inability to perform the usual duties of employment or the incapacity to perform such lesser duties, if any, as the employer, in its discretion, may assign without material reduction in compensation, or the incapacity to perform the duties of any employment covered by the Public Employees’

Retirement System (Section 25-11-101 et seq.) that is actually offered and is within the same general territorial work area, without material reduction in compensation. The employer shall be required to furnish the job description and duties of the member. The employer shall further certify whether the employer has offered the member other duties and has complied with the applicable provisions of the Americans With Disabilities Act in affording reasonable accommodations that would allow the employee to continue employment.

(b) Any inactive member who became a member of the system before July 1, 2007, with four (4) or more years of membership service credit, or any inactive member who became a member of the system on or after July 1, 2007, with eight (8) or more years of membership service credit, who has withdrawn from active state service, is not eligible for a disability retirement allowance unless the disability occurs within six (6) months of the termination of active service and unless satisfactory proof is presented to the board of trustees that the disability was the direct cause of withdrawal from state service.

(c) Any member who is or becomes eligible for service retirement benefits under Section 25-11-111 while pursuing a disability retirement allowance under this section or Section 25-11-114 may elect to receive a service retirement allowance pending a final determination on eligibility for a disability retirement allowance or withdrawal of the application for the disability retirement allowance. In such a case, an application for a disability retirement allowance must be on file with the system before the beginning of a service retirement allowance. If the application is approved, the option selected and beneficiary designated on the retirement application shall be used to determine the disability retirement allowance. If the application is not approved or if the application is withdrawn, the service retirement allowance shall continue to be paid in accordance with the option selected. No person may apply for a disability retirement allowance after the person begins to receive a service retirement allowance.

(d) If the medical board certifies that the member is not mentally or physically incapacitated for the future performance of duty, the member may request, within sixty (60) days, a hearing before the hearing officer as provided in Section 25-11-120. All hearings shall be held in accordance with rules and regulations adopted by the board to govern those hearings. The hearing may be closed upon the request of the member.

(e) The medical board may request additional medical evidence and/or other physicians to conduct an evaluation of the member's condition. If the medical board requests additional medical evidence and the member refuses the request, the application shall be considered void.

(2) Allowance on disability retirement.

(a) Upon retirement for disability, an eligible member shall receive a retirement allowance if he has attained the age of sixty (60) years.

(b) Except as provided in paragraph (c) of this subsection (2), an eligible member who is retired for disability and who has not attained sixty (60)

years of age shall receive a disability benefit as computed in Section 25-11-111(d), which shall consist of:

- (i) A member's annuity, which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and
- (ii) An employer's annuity equal to the amount that would have been payable as a retirement allowance for eligible creditable service if the member had continued in service to the age of sixty (60) years, which shall apply to the allowance for disability retirement paid to retirees receiving such allowance upon and after April 12, 1977. This employer's annuity shall be computed on the basis of the average "earned compensation" as defined in Section 25-11-103.
- (c) For persons who become members after June 30, 1992, and for active members on June 30, 1992, who elect benefits under this paragraph (c) instead of those provided under paragraph (b) of this subsection (2), the disability allowance shall consist of two (2) parts: a temporary allowance and a deferred allowance.

The temporary allowance shall equal the greater of (i) forty percent (40%) of average compensation at the time of disability, plus ten percent (10%) of average compensation for each of the first two (2) dependent children, as defined in Sections 25-11-103 and 25-11-114, or (ii) the accrued benefit based on actual service. It shall be payable for a period of time based on the member's age at disability, as follows:

Age at Disability	Duration
60 and earlier	to age 65
61	to age 66
62	to age 66
63	to age 67
64	to age 67
65	to age 68
66	to age 68
67	to age 69
68	to age 70
69 and over	one year

The deferred allowance shall begin when the temporary allowance ends and shall be payable for life. The deferred allowance shall equal the greater of (i) the allowance that would have been payable had the member continued in service to the termination age of the temporary allowance, but no more than forty percent (40%) of average compensation, or (ii) the accrued benefit based on actual service at the time of disability. The deferred allowance as determined at the time of disability shall be adjusted in accordance with Section 25-11-112 for the period during which the temporary annuity is payable. In no case shall a member receive less than Ten Dollars (\$10.00) per month for each year of service and proportionately for each quarter year thereof reduced for the option selected.

- (d) The member may elect to receive the actuarial equivalent of the disability retirement allowance in a reduced allowance payable throughout

life under any of the provisions of the options provided under Section 25-11-115.

(e) If a disability retiree who has not selected an option under Section 25-11-115 dies before being repaid in disability benefits the sum of his total contributions, then his named beneficiary shall receive the difference in cash, which shall apply to all deceased disability retirees from and after January 1, 1953.

(3) Reexamination of retirees retired on account of disability. Except as otherwise provided in this section, once each year during the first five (5) years following retirement of a member on a disability retirement allowance, and once in every period of three (3) years thereafter, the board of trustees may, and upon his application shall, require any disability retiree who has not yet attained the age of sixty (60) years or the termination age of the temporary allowance under subsection (2)(c) of this section to undergo a medical examination, the examination to be made at the place of residence of the retiree or other place mutually agreed upon by a physician or physicians designated by the board. The board, however, in its discretion, may authorize the medical board to establish reexamination schedules appropriate to the medical condition of individual disability retirees. If any disability retiree who has not yet attained the age of sixty (60) years or the termination age of the temporary allowance under subsection (2)(c) of this section refuses to submit to any medical examination provided in this section, his allowance may be discontinued until his withdrawal of that refusal; and if his refusal continues for one (1) year, all his rights to a disability benefit shall be revoked by the board of trustees.

(4) If the medical board reports and certifies to the board of trustees, after a comparable job analysis or other similar study, that the disability retiree is engaged in, or is able to engage in, a gainful occupation paying more than the difference between his disability allowance, exclusive of cost-of-living adjustments, and the average compensation, and if the board of trustees concurs in the report, the disability benefit shall be reduced to an amount that, together with the amount earnable by him, equals the amount of his average compensation. If his earning capacity is later changed, the amount of the benefit may be further modified, provided that the revised benefit shall not exceed the amount originally granted. A retiree receiving a disability benefit who is restored to active service at a salary less than the average compensation shall not become a member of the retirement system.

(5) If a disability retiree under the age of sixty (60) years or the termination age of the temporary allowance under subsection (2)(c) of this section is restored to active service at a compensation not less than his average compensation, his disability benefit shall end, he shall again become a member of the retirement system, and contributions shall be withheld and reported. Any such prior service certificate, on the basis of which his service was computed at the time of retirement, shall be restored to full force and effect. In addition, upon his later retirement he shall be credited with all creditable service as a member, but the total retirement allowance paid to the retired

member in his previous retirement shall be deducted from his retirement reserve and taken into consideration in recalculating the retirement allowance under a new option selected.

(6) If following reexamination in accordance with the provisions contained in this section, the medical board determines that a retiree retired on account of disability is physically and mentally able to return to the employment from which he is retired, the board of trustees, upon certification of those findings from the medical board, shall, after a reasonable period of time, terminate the disability allowance, whether or not the retiree is reemployed or seeks that reemployment. In addition, if the board of trustees determines that the retiree is no longer sustaining a loss of income as established by documented evidence of the retiree's earned income, the eligibility for a disability allowance shall terminate and the allowance terminated within a reasonable period of time. If the retirement allowance is terminated under the provisions of this section, the retiree may later qualify for a retirement allowance under Section 25-11-111 based on actual years of service credit plus credit for the period during which a disability allowance was paid.

(7) Any current member as of June 30, 1992, who retires on a disability retirement allowance after June 30, 1992, and who has not elected to receive benefits under subsection (2) (c) of this section, shall relinquish all rights under the Age Discrimination in Employment Act of 1967, as amended, with regard to the benefits payable under this section.

SOURCES: Codes, 1942, § 7446-16; Laws, 1952, ch. 299, § 16; Laws, 1968, ch. 578, § 3; Laws, 1977, ch. 450, § 3; Laws, 1978, ch. 382, § 1; Laws, 1986, ch. 472, § 1; Laws, 1991, ch. 513, § 5; Laws, 1992, ch. 576, § 4; Laws, 1993, ch. 617, § 5, 1995, ch. 627, § 3; Laws, 1996, ch. 472, § 4; Laws, 2002, ch. 627, § 9; Laws, 2007, ch. 407, § 5; Laws, 2011, ch. 469, § 3, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 469, § 7, provides:

"SECTION 7. Sections 5 and 6 of this act shall take effect and be in force from and after its passage [approved March 30, 2011], and the remainder of this act shall take effect and be in force from and after July 1, 2011."

Amendment Notes — The 2011 amendment substituted "Section 25-11-111(d)" for "Section 25-11-111(d)(1) through (d)(4)" and made minor stylistic changes.

JUDICIAL DECISIONS

1. Evidence.
4. Judicial review.

1. Evidence.

Pursuant to Miss. Code Ann. § 25-11-113(1)(a), the denial of disability benefits to an applicant, a former teacher, was not supported by substantial evidence where one doctor stated that rheumatoid arthritis prevented the applicant from performing her job duties and other doctors stated that the condition limited her ability to stand and write continuously. Moreover,

the applicant's principal certified that she was unable to perform her job duties, which frequently required standing and writing. *Public Emples. Ret. Sys. v. Worlow*, — So. 3d —, 2011 Miss. App. LEXIS 370 (Miss. Ct. App. June 21, 2011).

Decision of the Public Employees' Retirement System of Mississippi (PERS) denying non-duty related disability benefits to a claimant as PERS's decision was not supported by substantial evidence and, thus, was properly reversed. The

evidence showed that the claimant was disabled under Miss. Code Ann. § 25-11-113(1)(a) (Rev. 2006) as her ankle pain interfered with her job duties, which required her to be on her feet 95 percent of the time, and that the accommodations offered were not adequate for the performance of the job, in that the claimant could not effectively perform her duties while sitting. *Public Emples. Ret. Sys. v. McDonnell*, 70 So. 3d 264 (Miss. Ct. App. 2011), writ of certiorari denied by 69 So. 3d 767, 2011 Miss. LEXIS 456 (Miss. 2011).

Employee's application for hurt-on-the-job disability benefits, filed pursuant to Miss. Code Ann. §§ 25-11-113 and 25-11-114, was properly denied because the record contained sufficient evidence to support the administrative finding that the

employee was not disabled. Not all of the medical evidence and testimony supported a finding of disability; the records contained overwhelming inconsistencies in testing and symptomatology. *Henley v. Public Emples. Ret. Sys.*, 26 So. 3d 1108 (Miss. Ct. App. 2010).

4. Judicial review.

Administrative finding that an employee was not disabled was held to be proper because whether the employee was "disabled" was for the Board of Trustees of the Public Employees' Retirement System of Mississippi to determine and not for her employer. Furthermore, the statutory definition for "disability" was applied, as required by Miss. Code Ann. § 25-11-113(1)(a). *Henley v. Public Emples. Ret. Sys.*, 26 So. 3d 1108 (Miss. Ct. App. 2010).

§ 25-11-114. Retirement allowance for death before retirement or death or disability in line of duty.

(1) The applicable benefits provided in subsections (2) and (3) of this section shall be paid to eligible beneficiaries of any member who became a member of the system before July 1, 2007, and has completed four (4) or more years of membership service, or who became a member of the system on or after July 1, 2007, and has completed eight (8) or more years of membership service, and who dies before retirement and who has not filed a Pre-Retirement Optional Retirement Form as provided in Section 25-11-111.

(2)(a) The surviving spouse of a member who dies before retirement shall receive a monthly benefit computed in accordance with paragraph (d) of this subsection (2) as if the member had nominated his spouse as beneficiary if:

- (i) The member completed the requisite minimum number of years of membership service to qualify for a retirement allowance at age sixty (60);
- (ii) The spouse has been married to the member for not less than one (1) year preceding the death of the member;
- (iii) The member has not exercised any other option.

(b) If, at the time of the member's death, there are no dependent children, and the surviving spouse, who otherwise would receive the annuity under this subsection (2), has filed with the system a signed written waiver of his or her rights to the annuity and that waiver was in effect at the time of the member's death, a lump-sum distribution of the deceased member's accumulated contributions shall be refunded in accordance with Section 25-11-117.

(c) The spouse annuity shall begin on the first day of the month following the date of the member's death, but in case of late filing, retroactive payments will be made for a period of not more than one (1) year.

(d) The spouse of a member who is eligible to receive a monthly benefit under paragraph (a) of this subsection (2) shall receive a benefit for life equal to the higher of the following:

(i) The greater of twenty percent (20%) of the deceased member's average compensation as defined in Section 25-11-103 at the time of death or Fifty Dollars (\$50.00) monthly; or

(ii) Benefits calculated under Option 2 of Section 25-11-115. The method of calculating the retirement benefits shall be on the same basis as provided in Section 25-11-111(d) or (e), as applicable. However, if the member dies before being qualified for a retirement allowance, then the benefits shall be reduced by an actuarially determined percentage or factor based on the lesser of either the number of years of service credit or the number of years in age required to qualify for a retirement allowance in Section 25-11-111(d) or (e), as applicable.

(e) The surviving spouse of a deceased member who previously received spouse retirement benefits under paragraph (d)(i) of this subsection from and after July 1, 1992, and whose benefits were terminated before July 1, 2004, because of remarriage, may again receive the retirement benefits authorized under paragraph (d)(i) of this subsection by making application with the board to reinstate those benefits. Any reinstatement of the benefits shall be prospective only and shall begin after the first of the month following the date of the application for reinstatement, but no earlier than July 1, 2004. From and after July 1, 2010, any spouse who chose Option 2 from and after July 1, 1992, but before July 1, 2004, where the benefit, although payable for life, was less than the benefit available under the calculation in paragraph (d)(i) of this subsection shall have his or her benefit increased to the amount which provides the greater benefit.

(3)(a) Subject to the maximum limitation provided in this paragraph, the member's dependent children each shall receive an annuity of the greater of ten percent (10%) of the member's average compensation as defined in Section 25-11-103 at the time of the death of the member or Fifty Dollars (\$50.00) monthly; however, if there are more than three (3) dependent children, each dependent child shall receive an equal share of a total annuity equal to thirty percent (30%) of the member's average compensation, provided that the total annuity shall not be less than One Hundred Fifty Dollars (\$150.00) per month for all children.

(b) A child shall be considered to be a dependent child until marriage, or the attainment of age nineteen (19), whichever comes first; however, this age limitation shall be extended beyond age nineteen (19), but in no event beyond the attainment of age twenty-three (23), as long as the child is a student regularly pursuing a full-time course of resident study or training in an accredited high school, trade school, technical or vocational institute, junior or community college, college, university or comparable recognized educational institution duly licensed by a state. A student child whose birthday falls during the school year (September 1 through June 30) is considered not to reach age twenty-three (23) until the July 1 following the

actual twenty-third birthday. A full-time course of resident study or training means a day or evening noncorrespondence course that includes school attendance at the rate of at least thirty-six (36) weeks per academic year or other applicable period with a subject load sufficient, if successfully completed, to attain the educational or training objective within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned. Any child who is physically or mentally incompetent, as adjudged by either a Mississippi court of competent jurisdiction or by the board, shall receive benefits for as long as the incompetency exists.

(c) If there are more than three (3) dependent children, upon a child's ceasing to be a dependent child, his annuity shall terminate and there shall be a redetermination of the amounts payable to any remaining dependent children.

(d) Annuities payable under this subsection (3) shall begin the first day of the month following the date of the member's death or in case of late filing, retroactive payments will be made for a period of not more than one (1) year. Those benefits may be paid to a surviving parent or the lawful custodian of a dependent child for the use and benefit of the child without the necessity of appointment as guardian.

(4)(a) Death benefits in the line of duty. Regardless of the number of years of the member's creditable service, the spouse and/or the dependent children of an active member who is killed in the line of performance of duty or dies as a direct result of an accident occurring in the line of performance of duty shall qualify, on approval of the board, for a retirement allowance on the first of the month following the date of death, but in the case of late filing, retroactive payments will be made for a period of not more than one (1) year. The spouse shall receive a retirement allowance for life equal to one-half ($\frac{1}{2}$) of the average compensation as defined in Section 25-11-103. In addition to the retirement allowance for the spouse, or if there is no surviving spouse, the member's dependent child shall receive a retirement allowance in the amount of one-fourth ($\frac{1}{4}$) of the member's average compensation as defined in Section 25-11-103; however, if there are two (2) or more dependent children, each dependent child shall receive an equal share of a total annuity equal to one-half ($\frac{1}{2}$) of the member's average compensation. If there are more than two (2) dependent children, upon a child's ceasing to be a dependent child, his annuity shall terminate and there shall be a redetermination of the amounts payable to any remaining dependent children. Those benefits shall cease to be paid for the support and maintenance of each child upon the child attaining the age of nineteen (19) years; however, the spouse shall continue to be eligible for the aforesaid retirement allowance. Those benefits may be paid to a surviving parent or lawful custodian of the children for the use and benefit of the children without the necessity of appointment as guardian. Any spouse who received spouse retirement benefits under this paragraph (a) from and after April 4, 1984, and whose benefits were terminated before July 1, 2004, because of remarriage, may

again receive the retirement benefits authorized under this paragraph (a) by making application with the board to reinstate those benefits. Any reinstatement of the benefits shall be prospective only and shall begin after the first of the month following the date of the application for reinstatement, but not earlier than July 1, 2004.

(b) A child shall be considered to be a dependent child until marriage, or the attainment of age nineteen (19), whichever comes first; however, this age limitation shall be extended beyond age nineteen (19), but in no event beyond the attainment of age twenty-three (23), as long as the child is a student regularly pursuing a full-time course of resident study or training in an accredited high school, trade school, technical or vocational institute, junior or community college, college, university or comparable recognized educational institution duly licensed by a state. A student child whose birthday falls during the school year (September 1 through June 30) is considered not to reach age twenty-three (23) until the July 1 following the actual twenty-third birthday. A full-time course of resident study or training means a day or evening noncorrespondence course that includes school attendance at the rate of at least thirty-six (36) weeks per academic year or other applicable period with a subject load sufficient, if successfully completed, to attain the educational or training objective within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned. Any child who is physically or mentally incompetent, as adjudged by either a Mississippi court of competent jurisdiction or by the board, shall receive benefits for as long as the incompetency exists.

(5) If all the annuities provided for in this section payable on account of the death of a member terminate before there has been paid an aggregate amount equal to the member's accumulated contributions standing to the member's credit in the annuity savings account at the time of the member's death, the difference between the accumulated contributions and the aggregate amount of annuity payments shall be paid to the person that the member has nominated by written designation duly executed and filed with the board. If there is no designated beneficiary surviving at termination of benefits, the difference shall be payable under Section 25-11-117.1(1).

(6) Regardless of the number of years of creditable service, upon the application of a member or employer, any active member who becomes disabled as a direct result of an accident or traumatic event resulting in a physical injury occurring in the line of performance of duty, provided that the medical board or other designated governmental agency after a medical examination certifies that the member is mentally or physically incapacitated for the further performance of duty and the incapacity is likely to be permanent, may be retired by the board of trustees on the first of the month following the date of filing the application but in no event shall the retirement allowance begin before the termination of state service. The retirement allowance shall equal the allowance on disability retirement as provided in Section 25-11-113 but shall not be less than fifty percent (50%) of average compensation. Line of duty

disability benefits under this section shall be administered in accordance with the provisions of Section 25-11-113(1)(b), (c), (d) and (e), (3), (4), (5) and (6).

(7) For purposes of determining death or disability benefits under this section, the following shall apply:

(a) Permanent and total disability resulting from a cardiovascular, pulmonary or musculoskeletal condition that was not a direct result of a traumatic event occurring in the performance of duty shall be deemed an ordinary disability.

(b) A mental disability based exclusively on employment duties occurring on an ongoing basis shall be deemed an ordinary disability.

(8) If the deceased or disabled member has less than four (4) years of membership service, the average compensation as defined in Section 25-11-103 shall be the average of all annual earned compensation in state service for the purposes of benefits provided in this section.

(9) In case of death or total and permanent disability under subsection (4) or subsection (6) of this section and before the board shall consider any application for a retirement allowance, the employer must certify to the board that the member's death or disability was a direct result of an accident or a traumatic event occurring during and as a result of the performance of the regular and assigned duties of the employee and that the death or disability was not the result of the willful negligence of the employee.

(10) The application for the retirement allowance must be filed within one (1) year after death of an active member who is killed in the line of performance of duty or dies as a direct result of an accident occurring in the line of performance of duty or traumatic event; but the board of trustees may consider an application for disability filed after the one-year period if it can be factually demonstrated to the satisfaction of the board of trustees that the disability is due to the accident and that the filing was not accomplished within the one-year period due to a delayed manifestation of the disability or to circumstances beyond the control of the member. However, in case of late filing, retroactive payments will be made for a period of not more than one (1) year only.

(11)(a) Notwithstanding any other section of this article and in lieu of any payments to a designated beneficiary for a refund of contributions under Section 25-11-117, the spouse and/or children shall be eligible for the benefits payable under this section, and the spouse may elect, for both the spouse and/or children, to receive benefits in accordance with either subsections (2) and (3) or subsection (4) of this section; otherwise, the contributions to the credit of the deceased member shall be refunded in accordance with Section 25-11-117.

(b) Notwithstanding any other section of this article, a spouse who is entitled to receive a monthly benefit under either subsection (2) or (4) of this section and who is also the named beneficiary for a refund of accumulated contributions in the member's annuity savings account, may, after the death of the member, elect to receive a refund of accumulated contributions in lieu of a monthly allowance, provided that there are no dependent children entitled to benefits under subsection (3) of this section.

(12) If the member has previously received benefits from the system to which he was not entitled and has not repaid in full all amounts payable by him to the system, the annuity amounts otherwise provided by this section shall be withheld and used to effect repayment until the total of the withholdings repays in full all amounts payable by him to the system.

SOURCES: Laws, 1984, ch. 311; Laws, 1991, ch. 513, § 6; Laws, 1992, ch. 576, § 5; Laws, 1993, ch. 617, § 6; Laws, 2000, ch. 628, § 13; Laws, 2004, ch. 561, § 6; Laws, 2007, ch. 407, § 6; Laws, 2010, ch. 389, § 3; Laws, 2010, ch. 528, § 2; Laws, 2011, ch. 469, § 4, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 469, § 7, provides:

"SECTION 7. Sections 5 and 6 of this act shall take effect and be in force from and after its passage [approved March 30, 2011], and the remainder of this act shall take effect and be in force from and after July 1, 2011."

Amendment Notes — The 2011 amendment rewrote (2)(d)(ii); added the last sentence in (6); and added the introductory paragraph of (7) and the paragraph (a) and (b) designators; and redesignated former (7) through (11) as (8) through (12).

JUDICIAL DECISIONS

5. Eligibility.

Employee's application for hurt-on-the-job disability benefits, filed pursuant to Miss. Code Ann. §§ 25-11-113 and 25-11-114, was properly denied because the record contained sufficient evidence to support the administrative finding that the

employee was not disabled. Not all of the medical evidence and testimony supported a finding of disability; the records contained overwhelming inconsistencies in testing and symptomatology. *Henley v. Public Emples. Ret. Sys.*, 26 So. 3d 1108 (Miss. Ct. App. 2010).

§ 25-11-115. Options.

(1) Upon application for superannuation or disability retirement, any member may elect to receive his or her benefit in a retirement allowance payable throughout life with no further payments to anyone at the member's death, except that if the member's total retirement payments under this article do not equal the member's total contributions under this article, the named beneficiary shall receive the difference in cash at the member's death. Or the member may elect upon retirement, or upon becoming eligible for retirement, to receive the actuarial equivalent subject to the provisions of subsection (3) of this section of his or her retirement allowance in a reduced retirement allowance payable throughout life with the provision that:

Option 1. If the retired member dies before he or she has received in annuity payment the value of the member's annuity savings account as it was at the time of the member's retirement, the balance shall be paid to the legal representative or to such person as the member has nominated by written designation duly acknowledged and filed with the board;

Option 2. Upon the retired member's death, his or her reduced retirement allowance shall be continued throughout the life of, and paid to, such person as the member has nominated by written designation duly acknowledged and filed with the board of trustees at the time of his or her retirement;

Option 3. Upon the retired member's death, one-half ($\frac{1}{2}$) of his or her reduced retirement allowance shall be continued throughout the life of, and paid to, such person as the member has nominated by written designation duly acknowledged and filed with the board of trustees at the time of his or her retirement, and the other one-half ($\frac{1}{2}$) of his or her reduced retirement allowance to some other designated beneficiary;

Option 4. Upon the retired member's death, three-fourths ($\frac{3}{4}$) of his or her reduced retirement allowance, or such other specified amount, shall be continued throughout the life of, and paid to, such person as the member has nominated by written designation duly acknowledged and filed with the board of trustees at the time of his or her retirement;

Option 4-A. Upon the retired member's death, one-half ($\frac{1}{2}$) of his or her reduced retirement allowance, or such other specified amount, shall be continued throughout the life of, and paid to, such person as the member has nominated by written designation duly acknowledged and filed with the board of trustees at the time of his or her retirement;

Option 4-B. A reduced retirement allowance shall be continued throughout the life of the retirant, but with the further guarantee of payments to the named beneficiary or beneficiaries for a specified number of years certain. If the retired member or the last designated beneficiary both die before receiving all guaranteed payments due, the actuarial equivalent of the remaining payments shall be paid under Section 25-11-117.1(1);

Option 6. Any member who became a member of the system before July 1, 2007, and who has at least twenty-eight (28) years of creditable service at the time of retirement or who is at least sixty-three (63) years of age and eligible to retire, may select the maximum retirement benefit or an optional benefit as provided in this subsection together with a partial lump-sum distribution. Any member who became a member of the system on or after July 1, 2007, but before July 1, 2011, and who has at least twenty-eight (28) years of creditable service at the time of retirement may select the maximum retirement benefit or any optional benefit as provided in this subsection together with a partial lump-sum distribution. Any member who became a member of the system on or after July 1, 2011, and who has at least thirty-three (33) years of creditable service at the time of retirement may select the maximum retirement benefit or any optional benefit as provided in this subsection together with a partial lump-sum distribution. The amount of the lump-sum distribution under this option shall be equal to the maximum monthly benefit multiplied by twelve (12), twenty-four (24) or thirty-six (36) as selected by the member. The maximum retirement benefit shall be actuarially reduced to reflect the amount of the lump-sum distribution selected and further reduced for any other optional benefit selected. The annuity and lump-sum distribution shall be computed to result in no actuarial loss to the system. The lump-sum distribution shall be made as a single payment payable at the time the first monthly annuity payment is paid to the retiree. The amount of the lump-sum distribution shall be deducted from the member's annuity savings account in computing what contributions remain at the death

of the retiree and/or a beneficiary. The lump-sum distribution option may be elected only once by a member upon initial retirement, and may not be elected by a retiree, by members applying for a disability retirement annuity, or by survivors.

(2) No change in the option selected shall be permitted after the member's death or after the member has received his or her first retirement check except as provided in subsections (3) and (4) of this section and in Section 25-11-127. Members who are pursuing a disability retirement allowance and simultaneously or later elect to begin to receive a service retirement allowance while continuing to pursue a disability retirement allowance, shall not be eligible to select Option 6 and that option may not be selected at a later time if the application for a disability retirement allowance is voided or denied. However, any retired member who is receiving a retirement allowance under Option 2 or Option 4-A upon July 1, 1992, and whose designated beneficiary predeceased him or her or whose marriage to a spouse who is his or her designated beneficiary is terminated by divorce or other dissolution, upon written notification to the retirement system of the death of the designated beneficiary or of the termination of the retired member's marriage to the designated beneficiary, the retirement allowance payable to the member after receipt of that notification by the retirement system shall be equal to the retirement allowance that would have been payable if the member had not elected the option. In addition, any retired member who is receiving the maximum retirement allowance for life, a retirement allowance under Option 1 or who is receiving a retirement allowance under Option 2 or Option 4-A on July 1, 1992, may elect to provide survivor benefits under Option 2 or Option 4-A to a spouse who was not previously the member's beneficiary and whom the member married before July 1, 1992.

(3) Any retired member who is receiving a reduced retirement allowance under Option 2, Option 4 or Option 4-A whose designated beneficiary predeceases him or her, or whose marriage to a spouse who is his or her designated beneficiary is terminated by divorce or other dissolution, may elect to cancel the reduced retirement allowance and receive the maximum retirement allowance for life in an amount equal to the amount that would have been payable if the member had not elected Option 2, Option 4 or Option 4-A. That election must be made in writing to the office of the executive director of the system on a form prescribed by the board. Any such election shall be effective the first of the month following the date the election is received by the system; however, the election may be applied retroactively for not more than three (3) months but no earlier than the first of the month following the date of the death of the beneficiary.

(4) Any retired member who is receiving the maximum retirement allowance for life, or a retirement allowance under Option 1, and who marries after his or her retirement may elect to cancel the maximum retirement allowance and receive a reduced retirement allowance under Option 2, Option 4 or Option 4-A to provide continuing lifetime benefits to his or her spouse. That election must be made in writing to the office of the executive director of the system on

a form prescribed by the board not earlier than the date of the marriage. Any such election shall be effective the first of the month following the date the election is received by the system.

(5)(a) Except as otherwise provided in this subsection, if the election of an optional benefit is made after the member has attained the age of sixty-five (65) years, the actuarial equivalent factor shall be used to compute the reduced retirement allowance as if the election had been made on his or her sixty-fifth birthday; however, from and after January 1, 2003, if there is an election of Option 6 after the member has attained the age of sixty-five (65) years, the actuarial equivalent factor based on the retiree's age at the time of retirement shall be used to compute the reduced maximum monthly retirement allowance. However, if a retiree marries or remarries after retirement and elects either Option 2 or Option 4-A as provided in subsection (2) or (4) of this section, the actuarial equivalent factor used to compute the reduced retirement allowance shall be the factor for the age of the retiree and his or her beneficiary at the time such election for recalculation of benefits is made.

(b) For members who retire on or after July 1, 2012, the actuarial equivalent factor used to compute the reduced retirement allowance at retirement or upon any subsequent recalculation of the benefit shall be the factor for the age of the retiree and his or her beneficiary at the time of retirement or at the time an election for recalculation of benefits is made.

(6) Notwithstanding any provision of Section 25-11-1 et seq., no payments may be made for a retirement allowance on a monthly basis for a period of time in excess of that allowed by federal law.

(7) If a retirant and his or her eligible beneficiary, if any, both die before they have received in annuity payments a total amount equal to the accumulated contributions standing to the retirant's credit in the annuity savings account at the time of his or her retirement, the difference between the accumulated contributions and the total amount of annuities received by them shall be paid to such persons as the retirant has nominated by written designation duly executed and filed in the office of the executive director. If no designated person survives the retirant and his or her beneficiary, the difference, if any, shall be paid under Section 25-11-117.1(1).

(8) Any retired member who retired on Option 2(5) or 4-A(5) before July 1, 1992, who is still receiving a retirement allowance on July 1, 1994, shall receive an increase in the annual retirement allowance effective July 1, 1994, equal to the amount they would have received under Option 2 or Option 4-A without a reduction for Option 5 based on the ages at retirement of the retiree and beneficiary and option factors in effect on July 1, 1992. That increase shall be prospective only.

SOURCES: Codes, 1942, § 7446-17; Laws, 1952, ch. 299, § 17; Laws, 1962, ch. 579, § 1; Laws, 1971, ch. 478, § 4; Laws, 1977, ch. 450, § 4; Laws, 1984, ch. 496, § 2; Laws, 1986, ch. 472; Laws, 1992, ch. 576, § 6; Laws, 1993, ch. 617, § 7; Laws, 1994, ch. 601, § 5; Laws, 1999, ch. 544, § 2; Laws, 2000, ch. 628, § 14; Laws, 2002, ch. 627, § 10; Laws, 2007, ch. 407, § 7; Laws, 2008, ch. 359, § 3; ; Laws,

2010, ch. 389, § 4; Laws, 2010, ch. 528, § 3; Laws, 2010, ch. 1, 1st Ex Sess § 3; Laws, 2011, ch. 369, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment inserted “Option 4” following “Option 2” in the first sentences of (3) and (4); added “(a) Except as otherwise provided in this subsection” to the beginning of (5) and added paragraph (b).

§ 25-11-121. Investments.

(1) The board shall, from time to time, determine the current requirements for benefit payments and administrative expense which shall be maintained as a cash working balance, except that such cash working balance shall not exceed at any time an amount necessary to meet the current obligations of the system for a period of ninety (90) days. Any amounts in excess of such cash working balance shall be invested, as follows:

(a) Funds may be deposited in any institution insured by the Federal Deposit Insurance Corporation that maintains a facility that takes deposits in the State of Mississippi or a custodial bank;

(b) Corporate bonds and taxable municipal bonds; or corporate short-term obligations of corporations or of wholly owned subsidiaries of corporations, whose short-term obligations are rated A-2 or better by Standard and Poor's, rated P-2 or better by Moody's Investment Service, F-2 or better by Fitch Ratings, Ltd., or the equivalent of these ratings if assigned by another United States Securities and Exchange Commission designated Nationally Recognized Statistical Rating Organization;

(c) Agency and nonagency residential and commercial mortgage-backed securities and collateralized mortgage obligations;

(d) Asset-backed securities;

(e) Bank loans;

(f) Convertible bonds;

(g) Bonds of the Tennessee Valley Authority;

(h) Bonds, notes, certificates and other valid obligations of the United States, and other valid obligations of any federal instrumentality that issues securities under authority of an act of Congress and are exempt from registration with the Securities and Exchange Commission;

(i) Bonds, notes, debentures and other securities issued by any federal instrumentality and fully guaranteed by the United States;

(j) Interest-bearing revenue bonds or notes or bonds or notes which are general obligations of any state in the United States or of any city or county therein;

(k) Bonds of established non-United States companies and foreign government securities. The board may take requisite action to effectuate or hedge transactions or invest in currency through foreign or domestic banks, including the purchase and sale, transfer, exchange, or otherwise disposal of, and generally deal in foreign exchange through the use of foreign currency, interbank forward contracts, futures contracts, options contracts, swaps and other related derivative instruments, notwithstanding any other provisions of this article to the contrary;

(l) Shares of stocks, common and/or preferred, of corporations created by or existing under the laws of the United States or any state, district or territory thereof and shares of stocks, common and/or preferred, and convertible securities of non-United States companies; provided:

(i) The maximum investments in stocks shall not exceed eighty percent (80%) of the total book value of the total investment fund of the system;

(ii) The stock of such corporation shall:

1. Be listed on a national stock exchange; or
2. Be traded in the over-the-counter market;

(iii) The outstanding shares of such corporation shall have a total market value of not less than Fifty Million Dollars (\$50,000,000.00);

(iv) The amount of investment in any one (1) corporation shall not exceed three percent (3%) of the book value of the assets of the system;

(v) The shares of any one (1) corporation owned by the system shall not exceed five percent (5%) of that corporation's outstanding stock.

The board may take requisite action utilizing foreign currency as an investment vehicle, or to effectuate or hedge transactions for shares of stocks and convertible securities of non-United States companies through foreign or domestic banks, including the purchase and sale, transfer, exchange, or otherwise disposal of, and generally deal in foreign exchange through the use of foreign currency, interbank forward contracts, futures contracts, options contracts, swaps and other related derivative instruments, notwithstanding any other provisions of this article to the contrary;

(m) Covered call and put options on securities or indices traded on one or more of the regulated exchanges;

(n) Pooled or commingled funds managed by a corporate trustee or by a Securities and Exchange Commission registered investment advisory firm retained as an investment manager by the board of trustees, and shares of investment companies and unit investment trusts registered under the Investment Company Act of 1940, where such pooled or commingled funds or shares are comprised of common or preferred stocks, bonds, money market instruments or other investments authorized under this section. Such investment in commingled funds or shares shall be held in trust; provided that the total book value of investments under this paragraph shall at no time exceed five percent (5%) of the total book value of all investments of the system. Any investment manager approved by the board of trustees shall invest such commingled funds or shares as a fiduciary;

(o) Pooled or commingled real estate funds or real estate securities managed by a corporate trustee or by a Securities and Exchange Commission registered investment advisory firm retained as an investment manager by the board of trustees. Such investment in commingled funds or shares shall be held in trust; provided that the total book value of investments under this paragraph shall at no time exceed ten percent (10%) of the total book value of all investments of the system. Any investment manager

approved by the board of trustees shall invest such commingled funds or shares as a fiduciary. The ten percent (10%) limitation in this paragraph shall not be subject to the five percent (5%) limitation in paragraph (n) of this subsection;

(p) Types of investments not specifically authorized by this subsection if the investments are in the form of a separate account managed by a Securities and Exchange Commission registered investment advisory firm retained as an investment manager by the board; or a limited partnership or commingled fund approved by the board; provided that the total book value of investments under this paragraph shall at no time exceed ten percent (10%) of the total book value of all investments of the system. Any person or entity who exercises any discretionary authority or discretionary control respecting management of the separate account, limited partnership or commingled fund, or who exercises any authority or control respecting management or disposition of the assets of the separate account, limited partnership or commingled fund, shall exercise such authority or control as a fiduciary.

(2) All investments shall be acquired at prices not exceeding the prevailing market values for such investments.

(3) Any limitations herein set forth shall be applicable only at the time of purchase and shall not require the liquidation of any investment at any time. All investments shall be clearly marked to indicate ownership by the system and to the extent possible shall be registered in the name of the system.

(4) Subject to the above terms, conditions, limitations and restrictions, the board shall have power to sell, assign, transfer and dispose of any of the securities and investments of the system, provided that said sale, assignment or transfer has the majority approval of the entire board. The board may employ or contract with investment managers, evaluation services or other such services as determined by the board to be necessary for the effective and efficient operation of the system.

(5) Except as otherwise provided herein, no trustee and no employee of the board shall have any direct or indirect interest in the income, gains or profits of any investment made by the board, nor shall any such person receive any pay or emolument for his services in connection with any investment made by the board. No trustee or employee of the board shall become an endorser or surety, or in any manner an obligor for money loaned by or borrowed from the system.

(6) All interest derived from investments and any gains from the sale or exchange of investments shall be credited by the board to the account of the system.

(7) The board of trustees shall credit regular interest to the annuity savings account monthly. Regular interest shall mean such per centum rate to be compounded annually as set by the board of trustees through regulation.

(8) The board of trustees shall be the custodian of the funds of the system. All retirement allowance payrolls shall be certified by the executive director who shall furnish the board a surety bond in a company authorized to do

business in Mississippi in such an amount as shall be required by the board, the premium to be paid by the board from the expense account.

(9) For the purpose of meeting disbursements for retirement allowances, annuities and other payments, cash may be kept available, not exceeding the requirements of the system for a period of ninety (90) days, on deposit in one or more banks or trust companies organized under the laws of the State of Mississippi or the laws of the United States, provided that the sum on deposit in any one (1) bank or trust company shall not exceed thirty-five percent (35%) of the paid-up capital and regular surplus of such bank or trust company.

(10) The board, the executive director and employees shall discharge their duties with respect to the investments of the system solely for the interest of the system with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent investor acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, including diversifying the investments of the system so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

(11) Documentary material or data made or received by the system which consists of trade secrets or commercial or financial information that relates to the investments of the system shall be exempt from the Mississippi Public Records Act of 1983 if the disclosure of the material or data is likely to impair the system's ability to obtain such information in the future, or is likely to cause substantial harm to the competitive position of the person or entity from whom the information was obtained.

SOURCES: Codes, 1942, § 7446-20; Laws, 1952, ch. 299, § 20; Laws, 1954, ch. 308; Laws, 1958, ch. 545; Laws, 1966, ch. 617, § 2; Laws, 1968, ch. 578, § 4; Laws, 1973, ch. 450, § 6; Laws, 1978, ch. 382, § 2; Laws, 1980, ch. 397; Laws, 1986, ch. 472, § 3; Laws, 1987, ch. 325, § 2; Laws, 1990, ch. 388, § 1; Laws, 1991, ch. 590, § 1; Laws, 1992, ch. 575 § 1; Laws, 1993, ch. 617, § 9; Laws, 1995, ch. 624, § 7; Laws, 1996, ch. 472, § 7; Laws, 2000, ch. 628, § 8; Laws, 2004, ch. 361, § 1; Laws, 2005, ch. 441, § 1; Laws, 2006, ch. 438, § 1; Laws, 2006, ch. 474, § 15; Laws, 2007, ch. 305, § 1; Laws, 2008, ch. 359, § 10; Laws, 2010, ch. 528, § 5; Laws, 2011, ch. 397, § 1; Laws, 2013, ch. 428, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2011 amendment added the last sentence of (1)(n).

The 2013 amendment deleted “at such periodic intervals as the board may determine; however, all purchases shall be made from competitive offerings except short term obligations referred to in paragraph (d) of this subsection (1)” from the end of (1); deleted former (1)(a) and (b), which deleted certain bonds, notes certificates and other valid general obligations of the State of Mississippi or its political subdivisions from investment options for excess funds of the Public Employees’ Retirement System; redesignated former (1)(c) and (d) as (1)(a) and (b); deleted “rated by a United States Securities and Exchange Commission designated Nationally Recognized Statistical Rating Organization” following “taxable municipal bonds” near the beginning of (1)(b); rewrote (1)(i) to delete the requirement that cities or counties have a certain population and have not defaulted in the payment of certain principal or interest; deleted “rated by a recognized rating agency” from the end of the first sentence of (1)(k); inserted “common and/or preferred” near the end of the introductory paragraph of (1)(l); deleted

“provided price quotations for such over-the-counter stocks are quoted by the National Association of Securities Dealers Automated Quotation System (NASDAQ)” from the end of (1)(ii)2; inserted “utilizing foreign currency as an investment vehicle, or” and “or domestic” in the last paragraph of (1)(l); inserted “or indices” in (1)(m); and substituted “paragraph (n)” for “paragraph (l)” near the end of (1)(o); in (2), deleted “by the board” following “acquired” and substituted “investments” for “securities”; rewrote (7) to replace an annual interest credit on the mean amount for the preceding year with an interest credit to the annuity savings account; deleted former (10), which required Public Employees’ Retirement System monies or properties be safeguarded by posting bonds, notes or other securities as security, and former (11), which required the board to determine the degree of collateralization necessary for both foreign and domestic demand deposit accounts; and redesignated former (12) and (13) as (10) and (11).

§ 25-11-123. Crediting of assets; financing.

All of the assets of the system shall be credited according to the purpose for which they are held to one (1) of four (4) reserves; namely, the annuity savings account, the annuity reserve, the employer’s accumulation account, and the expense account.

(a) **Annuity savings account.** In the annuity savings account shall be accumulated the contributions made by members to provide for their annuities, including interest thereon which shall be posted monthly. Credits to and charges against the annuity savings account shall be made as follows:

(1) Beginning July 1, 2010, the employer shall cause to be deducted from the salary of each member on each and every payroll of the employer for each and every payroll period nine percent (9%) of earned compensation as defined in Section 25-11-103. Future contributions shall be fixed biennially by the board on the basis of the liabilities of the retirement system for the various allowances and benefits as shown by actuarial valuation; however, any member earning at a rate less than Sixteen Dollars and Sixty-seven Cents (\$16.67) per month, or Two Hundred Dollars (\$200.00) per year, shall contribute not less than One Dollar (\$1.00) per month, or Twelve Dollars (\$12.00) per year.

(2) The deductions provided in paragraph (1) of this subsection shall be made notwithstanding that the minimum compensation provided by law for any member is reduced by the deduction. Every member shall be deemed to consent and agree to the deductions made and provided for in paragraph (1) of this subsection and shall receipt for his full salary or compensation, and payment of salary or compensation less the deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the person during the period covered by the payment, except as to the benefits provided under Articles 1 and 3. The board shall provide by rules for the methods of collection of contributions from members and the employer. The board shall have full authority to require the production of evidence necessary to verify the correctness of amounts contributed.

(b) **Annuity reserve.** The annuity reserve shall be the account representing the actuarial value of all annuities in force, and to it shall be charged all annuities and all benefits in lieu of annuities, payable as provided in this

article. If a beneficiary retired on account of disability is restored to active service with a compensation not less than his average final compensation at the time of his last retirement, the remainder of his contributions shall be transferred from the annuity reserve to the annuity savings account and credited to his individual account therein, and the balance of his annuity reserve shall be transferred to the employer's accumulation account.

(c) **Employer's accumulation account.** The employer's accumulation account shall represent the accumulation of all reserves for the payment of all retirement allowances and other benefits payable from contributions made by the employer, and against this account shall be charged all retirement allowances and other benefits on account of members. Credits to and charges against the employer's accumulation account shall be made as follows:

(1) On account of each member there shall be paid monthly into the employer's accumulation account by the employers for the preceding fiscal year an amount equal to a certain percentage of the total earned compensation, as defined in Section 25-11-103, of each member. The percentage rate of those contributions shall be fixed biennially by the board on the basis of the liabilities of the retirement system for the various allowances and benefits as shown by actuarial valuation. Beginning January 1, 1990, the rate shall be fixed at nine and three-fourths percent (9-¾%). The board shall reduce the employer's contribution rate by one percent (1%) from and after July 1 of the year following the year in which the board determines and the board's actuary certifies that the employer's contribution rate can be reduced by that amount without causing the unfunded accrued actuarial liability amortization period for the retirement system to exceed twenty (20) years. Political subdivisions joining Article 3 of the Public Employees' Retirement System after July 1, 1968, may adjust the employer's contributions by agreement with the Board of Trustees of the Public Employees' Retirement System to provide service credits for any period before execution of the agreement based upon an actuarial determination of employer's contribution rates.

(2) On the basis of regular interest and of such mortality and other tables as are adopted by the board of trustees, the actuary engaged by the board to make each valuation required by this article during the period over which the accrued liability contribution is payable, immediately after making that valuation, shall determine the uniform and constant percentage of the earnable compensation of each member which, if contributed by the employer on the basis of compensation of the member throughout his entire period of membership service, would be sufficient to provide for the payment of any retirement allowance payable on his account for that service. The percentage rate so determined shall be known as the "normal contribution rate." After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the percentage rate of the salary of all members obtained by deducting from the total liabilities on account of membership service the amount in the employer's accumulation

account, and dividing the remainder by one percent (1%) of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contributions shall be determined by the actuary after each valuation.

(3) The total amount payable in each year to the employer's accumulation account shall not be less than the sum of the percentage rate known as the "normal contribution rate" and the "accrued liability contribution rate" of the total compensation earnable by all members during the preceding year, provided that the payment by the employer shall be sufficient, when combined with the amounts in the account, to provide the allowances and other benefits chargeable to this account during the year then current.

(4) The accrued liability contribution shall be discontinued as soon as the accumulated balance in the employer's accumulation account shall equal the present value, computed on the basis of the normal contribution rate then in force, or the prospective normal contributions to be received on account of all persons who are at that time members.

(5) All allowances and benefits in lieu thereof, with the exception of those payable on account of members who receive no prior service credit, payable from contributions of the employer, shall be paid from the employer's accumulation account.

(6) Upon the retirement of a member, an amount equal to his retirement allowance shall be transferred from the employer's accumulation account to the annuity reserve.

(7) The employer's accumulation account shall be credited with any assets authorized by law to be credited to the account.

(d) **Expense account.** The expense account shall be the account to which the expenses of the administration of the system shall be charged, exclusive of amounts payable as retirement allowances and as other benefits provided herein. The Legislature shall make annual appropriations in amounts sufficient to administer the system, which shall be credited to this account. There shall be transferred to the State Treasury from this account, not less than once per month, an amount sufficient for payment of the estimated expenses of the system for the succeeding thirty (30) days. Any interest earned on the expense account shall accrue to the benefit of the system. However, notwithstanding the provisions of Sections 25-11-15(10) and 25-11-105(f)(v)5, all expenses of the administration of the system shall be paid from the interest earnings, provided the interest earnings are in excess of the actuarial interest assumption as determined by the board, and provided the present cost of the administrative expense fee of two percent (2%) of the contributions reported by the political subdivisions and instrumentalities shall be reduced to one percent (1%) from and after July 1, 1983, through June 30, 1984, and shall be eliminated thereafter.

(e) **Collection of contributions.** The employer shall cause to be deducted on each and every payroll of a member for each and every payroll

period, beginning subsequent to January 31, 1953, the contributions payable by the member as provided in Articles 1 and 3.

The employer shall make deductions from salaries of employees as provided in Articles 1 and 3 and shall transmit monthly, or at such time as the board of trustees designates, the amount specified to be deducted to the Executive Director of the Public Employees' Retirement System. The executive director, after making a record of all those receipts, shall deposit such amounts as provided by law.

(f)(1) Upon the basis of each actuarial valuation provided herein, the board of trustees shall biennially determine the normal contribution rate and the accrued liability contribution rate as provided in this section. The sum of these two (2) rates shall be known as the "employer's contribution rate." Beginning on earned compensation effective January 1, 1990, the rate computed as provided in this section shall be nine and three-fourths percent (9- $\frac{3}{4}$ %). The board shall reduce the employer's contribution rate by one percent (1%) from and after July 1 of the year following the year in which the board determines and the board's actuary certifies that the employer's contribution rate can be reduced by that amount without causing the unfunded accrued actuarial liability amortization period for the retirement system to exceed twenty (20) years. The percentage rate of those contributions shall be fixed biennially by the board on the basis of the liabilities of the retirement system for the various allowances and benefits as shown by actuarial valuation.

(2) The amount payable by the employer on account of normal and accrued liability contributions shall be determined by applying the employer's contribution rate to the amount of compensation earned by employees who are members of the system. Monthly, or at such time as the board of trustees designates, each department or agency shall compute the amount of the employer's contribution payable, with respect to the salaries of its employees who are members of the system, and shall cause that amount to be paid to the board of trustees from the personal service allotment of the amount appropriated for the operation of the department or agency, or from funds otherwise available to the agency, for the payment of salaries to its employees.

(3) Except as otherwise provided in Section 25-11-106:

(i) Constables shall pay employer and employee contributions on their net fee income as well as the employee contributions on all direct treasury or county payroll income.

(ii) The county shall be responsible for the employer contribution on all direct treasury or county payroll income of constables.

(4) Except as otherwise provided in Section 25-11-106.1, chancery and circuit clerks shall be responsible for both the employer and employee share of contributions on the proportionate share of net income attributable to fees, as well as the employee share of net income attributable to direct treasury or county payroll income, and the employing county shall be responsible for the employer contributions on the net income attributable to direct treasury or county payroll income.

(5) Once each year, under procedures established by the system, each employer shall submit to the Public Employees' Retirement System a copy of their report to Social Security of all employees' earnings.

(6) The board shall provide by rules for the methods of collection of contributions of employers and members. The amounts determined due by an agency to the various funds as specified in Articles 1 and 3 are made obligations of the agency to the board and shall be paid as provided herein. Failure to deduct those contributions shall not relieve the employee and employer from liability thereof. Delinquent employee contributions and any accrued interest shall be the obligation of the employee and delinquent employer contributions and any accrued interest shall be the obligation of the employer. The employer may, in its discretion, elect to pay any or all of the interest on delinquent employee contributions. From and after July 1, 1996, under rules and regulations established by the board, all employers are authorized and shall transfer all funds due to the Public Employees' Retirement System electronically and shall transmit any wage or other reports by computerized reporting systems.

SOURCES: Codes, 1942, § 7446-21; Laws, 1952, ch. 299, § 21; Laws, 1960, ch. 453, § 4; Laws, 1966, ch. 618, § 2; Laws, 1968, ch. 578, § 5; Laws, 1973, ch. 450, § 4; Laws, 1982, ch. 452; Laws, 1989, ch. 303, § 2; Laws, 1989, ch. 513, § 3; Laws, 1991, ch. 513, § 9; Laws, 1992, ch. 576 § 7; Laws, 1994, ch. 601, § 6; Laws, 1995, ch. 624, § 8; Laws, 1999, ch. 544, § 6; Laws, 2002, ch. 627, § 12; Laws, 2002, ch. 636, § 3; Laws, 2010, ch. 1, 1st Ex Sess, § 1; Laws, 2011, ch. 402, § 3; Laws, 2011, ch. 469, § 6; Laws, 2013, ch. 488, § 2, eff from and after Oct. 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the second sentence of (a)(2) by substituting “paragraph (1) of this subsection” for “paragraph (1) of this section.” The Joint Committee ratified the correction at its August 1, 2013, meeting.

Section 3 of ch. 402, Laws of 2011, effective from and after passage (approved March 14, 2011), amended this section. Section 6 of ch. 469, Laws of 2011, effective from and after passage (approved March 30, 2011), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Legislative Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at its July 13, 2011, meeting.

Editor's Note — Laws of 2011, ch. 469, § 7, provides:

“SECTION 7. Sections 5 and 6 of this act shall take effect and be in force from and after its passage [approved March 30, 2011], and the remainder of this act shall take effect and be in force from and after July 1, 2011.”

Amendment Notes — The first 2011 amendment (ch. 402), added “Except as otherwise provided in Section 25-11-106.1” to the beginning of (f)(4); and deleted former last paragraph which read: “This section shall stand repealed on July 1, 2012.”

The second 2011 amendment (ch. 469) added (c)(7) and deleted the former last paragraph which read “This section shall stand repealed on July 1, 2011.”

The 2013 amendment in (a)(2), substituted “in paragraph (1) of this subsection” for “herein” twice, and substituted “by the deduction” for “thereby” at the end of the first sentence; added (f)(3), and divided former (f)(3) into (f)(3)(i) and (ii).

§ 25-11-125. Employer contributions for certain fee paid public officers.

(1) The board of supervisors may appropriate and include in its budget for public purposes a sufficient sum to pay the required employer contribution to the Public Employees’ Retirement System for all fee paid elected officials in judicial capacities of the county and supervisors’ districts, and those contributions shall be included by the clerk of the board in his regular reports and remittals to the Executive Director of the Public Employees’ Retirement System for other county officers and regular county employees whose employer contributions are not included in and paid from the annual county budget.

(2) If the county elects to be responsible for contributions on the net fee income of the constable, the board of supervisors of the county shall appropriate and include in its budget a sufficient sum to pay to the Public Employees’ Retirement System for each constable holding office in that county the required employer contributions on the net fee income and all direct payments to the constable from the county, and those contributions shall be handled by the clerk of the board in the manner required by subsection (1) of this section.

SOURCES: Codes, 1942, § 2941.5; Laws, 1966, ch. 621, § 1; Laws, 2013, ch. 488, § 3, eff from and after Oct. 1, 2013.

Amendment Notes — The 2013 amendment, in (1), substituted “supervisors may appropriate” for “supervisors is hereby authorized and empowered to appropriate,” and substituted “Executive Director” for “executive secretary”; added (2); and made minor stylistic changes.

ARTICLE 5.

TEACHERS’ RETIREMENT SYSTEM.

SEC.

25-11-201. Continuance of certain vested rights.

§ 25-11-201. Continuance of certain vested rights.

(1) As soon after July 1, 1952, as practicable, but not later than July 15, 1952, the board of trustees of the Teachers’ Retirement System shall transfer all funds and securities held by the Teachers’ Retirement System to the trustees of the Public Employees’ Retirement System created by Sections 25-11-1 through 25-11-139, and the corporation known as the Teachers’ Retirement System of Mississippi shall be dissolved as of the date thereof. The board of trustees of the Teachers’ Retirement System shall at that time make a full and complete report and accounting as to all funds and securities in its possession and under its control, and shall transfer all books, records, papers, and equipment under its control to the board of trustees of the Public

Employees' Retirement System. Under the provisions of said Sections 25-11-1 through 25-11-139, the board of trustees of the Public Employees' Retirement System shall from that date proceed with the liquidation of the Teachers' Retirement System as follows:

(a) Any former member of the Teachers' Retirement System who has been retired under any of the provisions of Chapter 161, Laws of 1944, or any former member who may be retired under said act prior to July 1, 1952, shall continue to receive the benefits provided by said Chapter 161, as amended, just as if said act had not been repealed, together with an additional retirement benefit in the amount of twenty percent (20%) thereof. Where necessary, an additional retirement benefit shall be made to any retired teacher under this section in order to provide a minimum retirement benefit of Forty Dollars (\$40.00) per month. From and after July 1, 1968, each and every benefit payment outlined above shall be increased by twenty-five percent (25%), making the minimum payment Fifty Dollars (\$50.00) per month and the maximum payment Seventy-five Dollars (\$75.00) per month. From and after January 1, 1967, any former teacher who had retired from teaching services on account of age prior to the date of abolishment of the Teachers' Retirement System of Mississippi and who at that time had thirty (30) years or more of teaching service, the last twenty (20) years of which were in this state, and who has attained age sixty-five (65) years or over shall be entitled to receive the minimum monthly retirement payment, from and after making application for such payment to the board of trustees of the Public Employees' Retirement System and furnishing the proper proof of age and services. The payment of these benefits is hereby made an obligation of the State of Mississippi. The Legislature shall annually appropriate an amount sufficient to pay these benefits which shall be credited to a trust fund to be designated as "Fund B." Payment of benefits to members of the Teachers' Retirement System retired prior to July 1, 1952, shall be paid from said "Fund B" and from no other source, except that any public school district or public junior college, by action of the board of trustees thereof, with funds derived locally, may provide additional supplementary benefits for teachers retired on or before July 1, 1952, but not to exceed one percent of the instructional budget in any fiscal year shall be so used.

(b) If any person having made contributions under such Chapter 161 dies prior to its repeal but before retiring, his accumulated contributions shall be paid out as he shall have directed in writing. In the absence of such written directions his accumulated contributions shall be paid to his estate. This paragraph shall apply also to any person dying subsequent to repeal, but before receiving his contributions.

(c) Interest on members' accumulated contributions shall cease on August 1, 1952.

(d) The accumulated contributions of the several members shall be set aside in a trust fund designated as "Fund A" to be held for refund to the respective persons or beneficiaries entitled thereto; no interest shall be allowed. Until refunded or otherwise disposed of, such funds, interest

therein, and rights thereto shall not be subject to legal, judicial, or other process.

(e) Within six (6) months after July 1, 1952, or as soon thereafter as practicable, the accumulated contributions of the members, less an amount sufficient to pay the employees' contributions as provided in Article 1 from the effective date of the federal-state agreement to July 1, 1952, shall be returned to the members respectively entitled thereto, or shall be used to purchase an additional annuity in accordance with Section 25-11-123(a)(3) if the member in writing shall affirmatively direct the custodian of such funds to transfer such member's contributions to the public employees' retirement system to be used for this purpose.

In any event, if no election has been made, such member's contributions shall be returned to him or, if deceased, be paid as he shall have directed. In the absence of such written direction, his accumulated contributions shall be paid to his estate.

(f) All other funds of whatsoever nature and kind transferred from the Teachers' Retirement System of Mississippi shall be set aside in the state treasury as a trust fund to be designated as "Fund C." From this fund there shall be paid the employer's contribution as provided in said Article 1 from the effective date of the federal-state agreement to January 1, 1953. Any balance remaining in this fund after such payment shall be transferred to "Fund B" to be applied toward the payment of an additional allowance of twenty percent (20%) as provided by subparagraph (a) of this section to persons retired for service or disability on or before July 1, 1952, under Chapter 161, Laws of 1944, as amended, or their beneficiaries.

(2) The effectiveness of that provision in subparagraph (1)(a) of this section, which adopts a minimum benefit of Fifty Dollars (\$50.00) per month for all teachers retired under the former Teachers' Retirement System, shall be contingent upon the annual appropriation of sufficient funds to pay the same for the fiscal year commencing July 1, 1970, and each succeeding fiscal year.

SOURCES: Codes, 1942, § 6294-31; Laws, 1952, ch. 302, § 2; Laws, 1954, ch. 284; Laws, 1964, ch. 390, § 1; Laws, 1966 Ex Sess, ch. 47, § 1; Laws, 1968, ch. 577, § 1; Laws, 1970, ch. 514, § 1, eff from and after July 1, 1970.

Editor's Note — In the 2010 Replacement Volume, subdivision (1)(a) was erroneously set out with a second paragraph. That paragraph has been deleted. The section, as reprinted above, appears as it was enacted by Chapter 514, Laws of 1970.

CHAPTER 13

Highway Safety Patrol Retirement System

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| SEC. | |
| 25-13-8. | Employer to pay member contributions required for fund; tax treatment; methods of payment. |
| 25-13-11. | Retirement allowance; superannuation retirement; annual increase; minimum retirement allowances; waiver of benefits. |
| 25-13-16. | Retirement benefit options; definitions. |

§ 25-13-8. Employer to pay member contributions required for fund; tax treatment; methods of payment.

The employer shall pick up the member contributions required by Section 25-13-7, Mississippi Code of 1972, for all compensation earned after June 30, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and Mississippi Income Tax Code; however, the employer shall continue to withhold federal and state income taxes based upon these contributions until the internal revenue service or federal courts rule that pursuant to section 414(h) of the United States Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The employer shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The employer may pick up these contributions by a reduction in the cash salary of the member or by an offset against a future salary increase or by a combination of a reduction in salary and offset against a future salary increase. If member contributions are picked up they shall be treated for all purposes of the Mississippi Highway Safety Patrol Retirement System in the same manner and to the same extent as member contributions made prior to the date picked up.

SOURCES: Laws, 1982, ch. 381, eff from and after July 1, 1982.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference near the end of the section by substituting "...shall be treated for all purposes of the Mississippi Highway Safety Patrol Retirement System in the same manner" for ".... shall be treated for all purposes of Article 3 in the same manner" The Joint Committee ratified the correction at its July 13, 2011, meeting.

§ 25-13-11. Retirement allowance; superannuation retirement; annual increase; minimum retirement allowances; waiver of benefits.

(1) Any member upon withdrawal from service, upon or after attainment of the age of fifty-five (55) years, who has completed at least five (5) years of creditable service, or any member upon withdrawal from service upon or after attainment of the age of forty-five (45) years, who has completed at least twenty (20) years of creditable service, or any member upon withdrawal from service, regardless of age, who has completed at least twenty-five (25) years of creditable service, shall be entitled to receive a retirement allowance, which shall be payable the first of the month following receipt of the member's application in the Office of the Executive Director of the Public Employees' Retirement System, but in no event before withdrawal from service.

Any member whose withdrawal from service occurs before attaining the age of fifty-five (55) years, who has completed more than five (5) years of

creditable service and has not received a refund of the member's accumulated contributions, shall be entitled to receive a retirement allowance beginning upon his attaining the age of fifty-five (55) years of the amount earned and accrued at the date of withdrawal from service.

The annual amount of the retirement allowance shall consist of:

(a) A member's annuity, which shall be the actuarial equivalent of the accumulated contributions of the member at the time of retirement, computed according to the actuarial table in use by the system.

(b) An employer's annuity which, together with the member's annuity provided above, shall be equal to two and one-half percent (2-½%) of the average compensation, based on the four (4) highest consecutive years, for each year of membership service.

(c) A prior service annuity equal to two and one-half percent (2-½%) of the average compensation, based on the four (4) highest consecutive years, for each year of prior service for which the member is allowed credit.

(d) In the case of retirement of any member prior to attaining the age of fifty-five (55) years, the retirement allowance shall be computed in accordance with the formula hereinabove set forth in this section, except that the employer's annuity and prior service annuity above described shall be reduced three percent (3%) for each year of age below fifty-five (55) years, or three percent (3%) for each year of service below twenty-five (25) years of creditable service, whichever is lesser.

(e) Upon retiring from service, a member shall be eligible to obtain retirement benefits, as computed above, for life, except that the aggregate amount of the employer's annuity and prior service annuity above described shall not exceed more than one hundred percent (100%) of the average compensation regardless of the years of service.

(f) Any member in the service who has attained the age of sixty-three (63) years shall be retired immediately. However, any member who has attained age sixty-three (63) may ask the Commissioner of Public Safety to allow him to continue in service with the Mississippi Highway Safety Patrol beyond age sixty-three (63). If the commissioner determines that the member's continuance in service would be advantageous to the Highway Safety Patrol because of his expert knowledge, experience or qualifications, the member shall be allowed to continue in service beyond age sixty-three (63) for a period of one (1) year. After the initial one-year continuance, the commissioner may authorize the member to continue in service for another period of one (1) year until the member attains age sixty-five (65), at which time retirement shall be mandatory.

(g) Notwithstanding any provision of this chapter pertaining to the Mississippi Highway Safety Patrol Retirement System, no payments may be made for a retirement allowance on a monthly basis for a period of time in excess of that allowed by any applicable federal law.

(h) In no case shall any retired member who has completed at least fifteen (15) years of creditable service receive less than Five Hundred Dollars (\$500.00) per month; in no case shall any retired member who has completed

ten (10) or more years of creditable service, but less than fifteen (15) years of creditable service, receive less than Three Hundred Dollars (\$300.00) per month; and in no case shall any retired member who has completed less than ten (10) years of creditable service receive less than Two Hundred Fifty Dollars (\$250.00) per month. In no case shall a beneficiary who is receiving a retirement allowance receive less than Two Hundred Fifty Dollars (\$250.00) per month or Three Thousand Dollars (\$3,000.00) per year.

(i) Any retired member who is receiving a retirement allowance on July 1, 1999, shall receive an ad hoc increase in the annual retirement allowance equal to Three Dollars and Fifty Cents (\$3.50) per month for each full fiscal year through June 30, 1999, that the member has actually drawn retirement payments from the date of retirement, or the date of last retirement if there is more than one (1) retirement date, plus an amount equal to One Dollar (\$1.00) per month for each full year of creditable service and proportionately for each quarter year of creditable service, as documented by the system and on which benefits are being paid. If there are multiple beneficiaries receiving a retirement allowance from a deceased member's account, the ad hoc increase shall be divided proportionately.

(2)(a) A retiree or beneficiary may, on a form prescribed by and filed with the Executive Director of the Public Employees' Retirement System, irrevocably waive all or a portion of any benefits from the plan to which the retiree or beneficiary is entitled. The waiver shall be binding on the heirs and assigns of any retiree or beneficiary and the same must agree to forever hold harmless the Highway Safety Patrol Retirement System and the Public Employees' Retirement System from any claim to the waived retirement benefits.

(b) Any waiver under this subsection shall apply only to the person executing the waiver. A beneficiary shall be entitled to benefits according to the option selected by the member at the time of retirement; however, a beneficiary may execute a waiver of benefits under this subsection.

(c) The Highway Safety Patrol Retirement System shall retain all amounts that are not used to pay benefits because of a waiver executed under this subsection.

(d) The Board of Trustees of the Public Employees' Retirement System may provide rules and regulations for the administration of waivers under this subsection.

SOURCES: Codes, 1942, § 8090-56; Laws, 1958, ch. 543, § 6; Laws, 1966, ch. 620, § 2; Laws, 1980, ch. 470, § 2; Laws, 1986, ch. 396, § 1; Laws, 1990, ch. 472, § 1; Laws, 1991, ch. 513, § 10; Laws, 1999, ch. 543, § 1; Laws, 2000, ch. 305, § 1; Laws, 2010, ch. 528, § 9; Laws, 2011, ch. 393, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment substituted “sixty-three (63)” for “sixty (60)” four times, “another period” for “additional periods” in (1)(f) and made minor stylistic changes throughout.

§ 25-13-16. Retirement benefit options; definitions.

(1) Upon application for superannuation or disability retirement, any member who retires after July 1, 1990, may elect to receive his benefit pursuant to the provisions of Sections 25-13-11 and 25-13-13. Or he may elect upon retirement, or upon becoming eligible for retirement, to receive the actuarial equivalent, subject to the provisions of subsection (3) of this section, of his retirement allowance in a reduced retirement allowance payable throughout life with the provision that:

Option 1. If he dies before he has received in annuity payment the value of the member's annuity savings account as it was at the time of his retirement, the balance shall be paid to his legal representative or to such person as he shall nominate by written designation duly acknowledged and filed with the board; or

Option 2. Upon his death, his reduced retirement allowance shall be continued throughout the life of, and paid to, such person as he has nominated by written designation duly acknowledged and filed with the board of trustees at the time of his retirement;

Option 3. Upon his death, one-half ($\frac{1}{2}$) of his reduced retirement allowance shall be continued throughout the life of, and paid to, such person as he shall have nominated by written designation duly acknowledged and filed with the board of trustees at the time of his retirement, and the other one-half ($\frac{1}{2}$) of his reduced retirement allowance to some other designated beneficiary;

Option 4. Upon his death, three-fourths ($\frac{3}{4}$) of his reduced retirement allowance, or such other specified amount, shall be continued throughout the life of, and paid to, such person he shall have nominated by written designation duly acknowledged and filed with the board of trustees at the time of his retirement;

Option 4-A. Upon his death, one-half ($\frac{1}{2}$) of his reduced retirement allowance, or such other specified amount, shall be continued throughout the life of, and paid to, such person as he shall have nominated by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option 4-B. A reduced retirement allowance shall be continued throughout the life of the retirant, but with the further guarantee of payments to the named beneficiary or beneficiaries for a specified number of years certain. If the retired member or the last designated beneficiary both die prior to receiving all guaranteed payments due, the actuarial equivalent of the remaining payments shall be paid pursuant to Section 25-13-21.1(1);

Option 4-C. Such retirement allowance otherwise payable may be converted into a retirement allowance of equivalent actuarial value in such an amount that, with the member's benefit under Title II of the federal Social Security Act, the member will receive, so far as possible, approximately the same amount annually before and after the earliest age at which the member becomes eligible to receive a social security benefit. This option shall not be available to retirees whose retirement is effective on or after July 1, 2004;

Option 6. Any member who is eligible to retire with an unreduced benefit may select the maximum retirement benefit or an optional benefit as provided in this subsection together with a partial lump-sum distribution. The amount of the lump-sum distribution under this option shall be equal to the maximum monthly benefit multiplied by twelve (12), twenty-four (24) or thirty-six (36) as selected by the member. The maximum retirement benefit shall be actuarially reduced to reflect the amount of the lump-sum distribution selected and further reduced for any other optional benefit selected. The annuity and lump-sum distribution shall be computed to result in no actuarial loss to the system. The lump-sum distribution shall be made as a single payment payable at the time the first monthly annuity payment is paid to the retiree. The amount of the lump-sum distribution shall be deducted from the member's annuity savings account in computing what contributions remain at the death of the retiree and/or a beneficiary. The lump-sum distribution option may be elected only once by a member upon initial retirement, and may not be elected by a retiree, by members applying for a disability retirement annuity, by survivors or by a member selecting Option 4-C.

(2) No change in the option selected shall be permitted after the member's death or after the member has received his first retirement check, except as provided in subsections (3) and (4) of this section. However, any retired member who is receiving a retirement allowance under Option 2 or Option 4-A upon July 1, 1999, and whose designated beneficiary predeceased him or whose marriage to a spouse who is his designated beneficiary is terminated by divorce or other dissolution, upon written notification to the retirement system of the death of the designated beneficiary or of the termination of his marriage to his designated beneficiary, the retirement allowance payable to the member after receipt of such notification by the retirement system shall be equal to the retirement allowance that would have been payable if the member had not elected the option. In addition, any retired member who is receiving the maximum retirement allowance for life, a retirement allowance under Option 1 or who is receiving a retirement allowance under Option 2 or Option 4-A on July 1, 1999, may elect to provide survivor benefits under Option 2 or Option 4-A to a spouse who was not previously the member's beneficiary and who the member married before July 1, 1999. Should a member retired on disability be returned to active service, the option previously selected shall be null and void. Upon subsequent retirement a new option may be selected.

(3) Any retired member who is receiving a reduced retirement allowance under Option 2, Option 4 or Option 4-A whose designated beneficiary predeceases him, or whose marriage to a spouse who is his designated beneficiary is terminated by divorce or other dissolution, may elect to cancel his reduced retirement allowance and receive the maximum retirement allowance for life in an amount equal to the amount that would have been payable if the member had not elected Option 2, Option 4 or Option 4-A. Such election must be made in writing to the office of the executive director of the system on a form prescribed by the board. Any such election shall be effective the first of the month following the date the election is received by the system; however, the

election may be applied retroactively for not more than three (3) months but no earlier than the first of the month following the date of the death of the beneficiary.

(4) Any retired member who is receiving the maximum retirement allowance for life, or a retirement allowance under Option 1, and who marries after his retirement may elect to cancel his maximum retirement allowance and receive a reduced retirement allowance under Option 2, Option 4 or Option 4-A to provide continuing lifetime benefits to his spouse. Such election must be made in writing to the office of the executive director of the system on a form prescribed by the board not earlier than the date of the marriage. Any such election shall be effective the first of the month following the date the election is received by the system. However, if a retiree marries or remarries after retirement and elects either Option 2, Option 4 or Option 4-A as provided in subsection (2) or (4) of this section, the actuarial equivalent factor used to compute the reduced retirement allowance shall be the factor for the age of the retiree and his or her beneficiary at the time such election for recalculation of benefits is made.

(5) Any member in service who has qualified for retirement benefits may select any optional method of settlement of retirement benefits by notifying the Executive Director of the Board of Trustees of the Public Employees' Retirement System in writing, on a form prescribed by the board, of the option he has selected and by naming the beneficiary of such option and furnishing necessary proof of age. Such option, once selected, may be changed at any time prior to actual retirement or death, but upon the death or retirement of the member, the optional settlement shall be placed in effect upon proper notification to the executive director.

(6) Notwithstanding any provision of Section 25-13-1 et seq., no payments may be made for a retirement allowance on a monthly basis for a period of time in excess of that allowed by federal law.

(7) If a retirant and his eligible beneficiary, if any, both die before they have received in annuity payments a total amount equal to the accumulated contributions standing to the retirant's credit in the annuity savings account at the time of his retirement, the difference between the accumulated contributions and the total amount of annuities received by them shall be paid to such persons as the retirant has nominated by written designation duly executed and filed in the office of the executive director. If no designated person survives the retirant and his beneficiary, the difference, if any, shall be paid pursuant to Section 25-13-21.1(1).

(8) Any retired member who retired on Option 2(5) or 4-A(5) before July 1, 1999, who is still receiving a retirement allowance as of July 1, 1999, shall receive an increase in the annual retirement allowance effective July 1, 1999, equal to the amount they would have received under Option 2 or Option 4-A without a reduction for Option 5 based on the ages at retirement of the retiree and beneficiary and option factors in effect on July 1, 1999. Such increase shall be prospective only.

(9) For purposes of this section:

- (a) “Beneficiary” means any person designated to receive a retirement allowance, an annuity or other benefit as provided by this chapter. Such designation shall be in writing filed in the Office of the Executive Director of the Board of Trustees of the Public Employees’ Retirement System, and no designation or change of beneficiary shall be made in any other manner; however, notwithstanding any provision of this chapter to the contrary, the lawful spouse of a member at the time of the death of a member shall be the beneficiary of such member unless the member has designated another beneficiary subsequent to the date of marriage.
- (b) “Actuarial equivalent” shall mean a benefit of equal value to the accumulated contributions, annuity or benefit, as the case may be, when computed upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest.
- (c) “Actuarial tables” shall mean such tables of mortality and rates of interest as shall be adopted by the board in accordance with the recommendation of the actuary.

SOURCES: Laws, 1990, ch. 472, § 2; Laws, 1991, ch. 387 § 1; Laws, 1995, ch. 587, § 1; Laws, 1999, ch. 544, § 10; Laws, 2000, ch. 628, § 18; Laws, 2002, ch. 627, § 16; Laws, 2008, ch. 359, § 4; Laws, 2010, ch. 528, § 10; Laws, 2011, ch. 369, § 2, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment added Option 4 in (1); and inserted “Option 4” following “Option 2” twice in the first sentence of (3) and the first and fourth sentences of (4).

CHAPTER 15

Group Insurance for Public Employees

Article 1.	State Employees Life and Health Insurance Plan	25-15-1
Article 3.	Group Insurance for Employees of Local Governments and Their Institutions and Agencies	25-15-101
Article 9.	Administration of Group Insurance Plans	25-15-301

ARTICLE 1.

STATE EMPLOYEES LIFE AND HEALTH INSURANCE PLAN.

SEC.	
25-15-9.	Formulation of state employees health insurance plan; benefits.
25-15-15.	Payment of premiums; active full-time employees assessed portion of active employee premium under certain circumstances; purchase of additional coverage; late charges and interest penalties; State Employees Insurance Fund; Insurance Reserve Fund [Repealed effective July 1, 2015].

§ 25-15-9. Formulation of state employees health insurance plan; benefits.

[Through June 30 of the year in which Section 25-11-143 becomes effective as provided in subsection (1) of Section 25-11-143, this section shall read as follows:]

(1)(a) The board shall design a plan of health insurance for state employees that provides benefits for semiprivate rooms in addition to other incidental coverages that the board deems necessary. The amount of the coverages shall be in such reasonable amount as may be determined by the board to be adequate, after due consideration of current health costs in Mississippi. The plan shall also include major medical benefits in such amounts as the board determines. The plan shall provide for coverage for telemedicine services as provided in Section 83-9-351. The board is also authorized to accept bids for such alternate coverage and optional benefits as the board deems proper. Any contract for alternative coverage and optional benefits shall be awarded by the board after it has carefully studied and evaluated the bids and selected the best and most cost-effective bid. The board may reject all of the bids; however, the board shall notify all bidders of the rejection and shall actively solicit new bids if all bids are rejected. The board may employ or contract for such consulting or actuarial services as may be necessary to formulate the plan, and to assist the board in the preparation of specifications and in the process of advertising for the bids for the plan. Those contracts shall be solicited and entered into in accordance with Section 25-15-5. The board shall keep a record of all persons, agents and corporations who contract with or assist the board in preparing and developing the plan. The board in a timely manner shall provide copies of this record to the members of the advisory council created in this section and those legislators, or their designees, who may attend meetings of the advisory council. The board shall provide copies of this record in the solicitation of bids for the administration or servicing of the self-insured program. Each person, agent or corporation that, during the previous fiscal year, has assisted in the development of the plan or employed or compensated any person who assisted in the development of the plan, and that bids on the administration or servicing of the plan, shall submit to the board a statement accompanying the bid explaining in detail its participation with the development of the plan. This statement shall include the amount of compensation paid by the bidder to any such employee during the previous fiscal year. The board shall make all such information available to the members of the advisory council and those legislators, or their designees, who may attend meetings of the advisory council before any action is taken by the board on the bids submitted. The failure of any bidder to fully and accurately comply with this paragraph shall result in the rejection of any bid submitted by that bidder or the cancellation of any contract executed when the failure is discovered after the acceptance of that bid. The board is authorized to

promulgate rules and regulations to implement the provisions of this subsection.

The board shall develop plans for the insurance plan authorized by this section in accordance with the provisions of Section 25-15-5.

Any corporation, association, company or individual that contracts with the board for the third-party claims administration of the self-insured plan shall prepare and keep on file an explanation of benefits for each claim processed. The explanation of benefits shall contain such information relative to each processed claim that the board deems necessary, and, at a minimum, each explanation shall provide the claimant's name, claim number, provider number, provider name, service dates, type of services, amount of charges, amount allowed to the claimant and reason codes. The information contained in the explanation of benefits shall be available for inspection upon request by the board. The board shall have access to all claims information utilized in the issuance of payments to employees and providers.

(b) There is created an advisory council to advise the board in the formulation of the State and School Employees Health Insurance Plan. The council shall be composed of the State Insurance Commissioner, or his designee, an employee-representative of the institutions of higher learning appointed by the board of trustees thereof, an employee-representative of the Department of Transportation appointed by the director thereof, an employee-representative of the Department of Revenue appointed by the Commissioner of Revenue, an employee-representative of the Mississippi Department of Health appointed by the State Health Officer, an employee-representative of the Mississippi Department of Corrections appointed by the Commissioner of Corrections, and an employee-representative of the Department of Human Services appointed by the Executive Director of Human Services, two (2) certificated public school administrators appointed by the State Board of Education, two (2) certificated classroom teachers appointed by the State Board of Education, a noncertificated school employee appointed by the State Board of Education and a community/junior college employee appointed by the Mississippi Community College Board.

The Lieutenant Governor may designate the Secretary of the Senate, the Chairman of the Senate Appropriations Committee, the Chairman of the Senate Education Committee and the Chairman of the Senate Insurance Committee, and the Speaker of the House of Representatives may designate the Clerk of the House, the Chairman of the House Appropriations Committee, the Chairman of the House Education Committee and the Chairman of the House Insurance Committee, to attend any meeting of the State and School Employees Insurance Advisory Council. The appointing authorities may designate an alternate member from their respective houses to serve when the regular designee is unable to attend the meetings of the council. Those designees shall have no jurisdiction or vote on any matter within the jurisdiction of the council. For attending

meetings of the council, the legislators shall receive per diem and expenses, which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the council will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the council without prior approval of the proper committee in their respective houses.

(c) No change in the terms of the State and School Employees Health Insurance Plan may be made effective unless the board, or its designee, has provided notice to the State and School Employees Health Insurance Advisory Council and has called a meeting of the council at least fifteen (15) days before the effective date of the change. If the State and School Employees Health Insurance Advisory Council does not meet to advise the board on the proposed changes, the changes to the plan shall become effective at such time as the board has informed the council that the changes shall become effective.

(d) Medical benefits for retired employees and dependents under age sixty-five (65) years and not eligible for Medicare benefits. For employees who retire before July 1, 2005, and for employees retiring due to work-related disability under the Public Employees' Retirement System, the same health insurance coverage as for all other active employees and their dependents shall be available to retired employees and all dependents under age sixty-five (65) years who are not eligible for Medicare benefits, the level of benefits to be the same level as for all other active participants. For employees who retire on or after July 1, 2005, and not retiring due to work-related disability under the Public Employees' Retirement System, the same health insurance coverage as for all other active employees and their dependents shall be available to those retiring employees and all dependents under age sixty-five (65) years who are not eligible for Medicare benefits only if the retiring employees were participants in the State and School Employees Health Insurance Plan for four (4) years or more before their retirement, the level of benefits to be the same level as for all other active participants. This section will apply to those employees who retire due to one hundred percent (100%) medical disability as well as those employees electing early retirement.

(e) Medical benefits for retired employees and dependents over age sixty-five (65) years or otherwise eligible for Medicare benefits. For employees who retire before July 1, 2005, and for employees retiring due to work-related disability under the Public Employees' Retirement System, the health insurance coverage available to retired employees over age sixty-five (65) years or otherwise eligible for Medicare benefits, and all dependents over age sixty-five (65) years or otherwise eligible for Medicare benefits, shall be the major medical coverage. For employees retiring on or after July 1, 2005, and not retiring due to work-related disability under the Public Employees' Retirement System,

the health insurance coverage described in this paragraph (e) shall be available to those retiring employees only if they were participants in the State and School Employees Health Insurance Plan for four (4) years or more and are over age sixty-five (65) years or otherwise eligible for Medicare benefits, and to all dependents over age sixty-five (65) years or otherwise eligible for Medicare benefits. Benefits shall be reduced by Medicare benefits as though the Medicare benefits were the base plan.

All covered individuals shall be assumed to have full Medicare coverage, Parts A and B; and any Medicare payments under both Parts A and B shall be computed to reduce benefits payable under this plan.

(f) Lifetime maximum: The lifetime maximum amount of benefits payable under the health insurance plan for each participant is Two Million Dollars (\$2,000,000.00).

(2) Nonduplication of benefits — reduction of benefits by Title XIX benefits: When benefits would be payable under more than one (1) group plan, benefits under those plans will be coordinated to the extent that the total benefits under all plans will not exceed the total expenses incurred.

Benefits for hospital or surgical or medical benefits shall be reduced by any similar benefits payable in accordance with Title XIX of the Social Security Act or under any amendments thereto, or any implementing legislation.

Benefits for hospital or surgical or medical benefits shall be reduced by any similar benefits payable by workers' compensation.

(3)(a) Schedule of life insurance benefits — group term: The amount of term life insurance for each active employee of a department, agency or institution of the state government shall not be in excess of One Hundred Thousand Dollars (\$100,000.00), or twice the amount of the employee's annual wage to the next highest One Thousand Dollars (\$1,000.00), whichever may be less, but in no case less than Thirty Thousand Dollars (\$30,000.00), with a like amount for accidental death and dismemberment on a twenty-four-hour basis. The plan will further contain a premium waiver provision if a covered employee becomes totally and permanently disabled before age sixty-five (65) years. Employees retiring after June 30, 1999, shall be eligible to continue life insurance coverage in an amount of Five Thousand Dollars (\$5,000.00), Ten Thousand Dollars (\$10,000.00) or Twenty Thousand Dollars (\$20,000.00) into retirement.

(b) Effective October 1, 1999, schedule of life insurance benefits — group term: The amount of term life insurance for each active employee of any school district, community/junior college, public library or university-based program authorized under Section 37-23-31 for deaf, aphasic and emotionally disturbed children or any regular nonstudent bus driver shall not be in excess of One Hundred Thousand Dollars (\$100,000.00), or twice the amount of the employee's annual wage to the next highest One Thousand Dollars (\$1,000.00), whichever may be less, but in no case less than Thirty Thousand Dollars (\$30,000.00), with a like amount for accidental death and dismemberment on a twenty-four-hour basis. The

plan will further contain a premium waiver provision if a covered employee of any school district, community/junior college, public library or university-based program authorized under Section 37-23-31 for deaf, aphasic and emotionally disturbed children or any regular nonstudent bus driver becomes totally and permanently disabled before age sixty-five (65) years. Employees of any school district, community/junior college, public library or university-based program authorized under Section 37-23-31 for deaf, aphasic and emotionally disturbed children or any regular nonstudent bus driver retiring after September 30, 1999, shall be eligible to continue life insurance coverage in an amount of Five Thousand Dollars (\$5,000.00), Ten Thousand Dollars (\$10,000.00) or Twenty Thousand Dollars (\$20,000.00) into retirement.

(4) Any eligible employee who on March 1, 1971, was participating in a group life insurance program that has provisions different from those included in this article and for which the State of Mississippi was paying a part of the premium may, at his discretion, continue to participate in that plan. The employee shall pay in full all additional costs, if any, above the minimum program established by this article. Under no circumstances shall any individual who begins employment with the state after March 1, 1971, be eligible for the provisions of this subsection.

(5) The board may offer medical savings accounts as defined in Section 71-9-3 as a plan option.

(6) Any premium differentials, differences in coverages, discounts determined by risk or by any other factors shall be uniformly applied to all active employees participating in the insurance plan. It is the intent of the Legislature that the state contribution to the plan be the same for each employee throughout the state.

(7) On October 1, 1999, any school district, community/junior college district or public library may elect to remain with an existing policy or policies of group life insurance with an insurance company approved by the State and School Employees Health Insurance Management Board, in lieu of participation in the State and School Life Insurance Plan. On or after July 1, 2004, until October 1, 2004, any school district, community/junior college district or public library may elect to choose a policy or policies of group life insurance existing on October 1, 1999, with an insurance company approved by the State and School Employees Health Insurance Management Board in lieu of participation in the State and School Life Insurance Plan. The state's contribution of up to fifty percent (50%) of the active employee's premium under the State and School Life Insurance Plan may be applied toward the cost of coverage for full-time employees participating in the approved life insurance company group plan. For purposes of this subsection (7), "life insurance company group plan" means a plan administered or sold by a private insurance company. After October 1, 1999, the board may assess charges in addition to the existing State and School Life Insurance Plan rates to such employees as a condition of enrollment in the State and School Life Insurance Plan. In order for any life insurance company group plan to

be approved by the State and School Employees Health Insurance Management Board under this subsection (7), it shall meet the following criteria:

(a) The insurance company offering the group life insurance plan shall be rated "A-" or better by A.M. Best state insurance rating service and be licensed as an admitted carrier in the State of Mississippi by the Mississippi Department of Insurance.

(b) The insurance company group life insurance plan shall provide the same life insurance, accidental death and dismemberment insurance and waiver of premium benefits as provided in the State and School Life Insurance Plan.

(c) The insurance company group life insurance plan shall be fully insured, and no form of self-funding life insurance by the company shall be approved.

(d) The insurance company group life insurance plan shall have one (1) composite rate per One Thousand Dollars (\$1,000.00) of coverage for active employees regardless of age and one (1) composite rate per One Thousand Dollars (\$1,000.00) of coverage for all retirees regardless of age or type of retiree.

(e) The insurance company and its group life insurance plan shall comply with any administrative requirements of the State and School Employees Health Insurance Management Board. If any insurance company providing group life insurance benefits to employees under this subsection (7) fails to comply with any requirements specified in this subsection or any administrative requirements of the board, the state shall discontinue providing funding for the cost of that insurance.

[From and after July 1 of the year in which Section 25-11-143 becomes effective as provided in subsection (1) of Section 25-11-143, this section shall read as follows:]

(1)(a) The board shall design a plan of health insurance for state employees that provides benefits for semiprivate rooms in addition to other incidental coverages that the board deems necessary. The amount of the coverages shall be in such reasonable amount as may be determined by the board to be adequate, after due consideration of current health costs in Mississippi. The plan shall also include major medical benefits in such amounts as the board determines. The plan shall provide for coverage for telemedicine services as provided in Section 83-9-351. The board is also authorized to accept bids for such alternate coverage and optional benefits as the board deems proper. Any contract for alternative coverage and optional benefits shall be awarded by the board after it has carefully studied and evaluated the bids and selected the best and most cost-effective bid. The board may reject all of the bids; however, the board shall notify all bidders of the rejection and shall actively solicit new bids if all bids are rejected. The board may employ or contract for such consulting or actuarial services as may be necessary to formulate the plan, and to assist the board in the preparation of specifications and in the process of

advertising for the bids for the plan. Those contracts shall be solicited and entered into in accordance with Section 25-15-5. The board shall keep a record of all persons, agents and corporations who contract with or assist the board in preparing and developing the plan. The board in a timely manner shall provide copies of this record to the members of the advisory council created in this section and those legislators, or their designees, who may attend meetings of the advisory council. The board shall provide copies of this record in the solicitation of bids for the administration or servicing of the self-insured program. Each person, agent or corporation that, during the previous fiscal year, has assisted in the development of the plan or employed or compensated any person who assisted in the development of the plan, and that bids on the administration or servicing of the plan, shall submit to the board a statement accompanying the bid explaining in detail its participation with the development of the plan. This statement shall include the amount of compensation paid by the bidder to any such employee during the previous fiscal year. The board shall make all such information available to the members of the advisory council and those legislators, or their designees, who may attend meetings of the advisory council before any action is taken by the board on the bids submitted. The failure of any bidder to fully and accurately comply with this paragraph shall result in the rejection of any bid submitted by that bidder or the cancellation of any contract executed when the failure is discovered after the acceptance of that bid. The board is authorized to promulgate rules and regulations to implement the provisions of this subsection.

The board shall develop plans for the insurance plan authorized by this section in accordance with the provisions of Section 25-15-5.

Any corporation, association, company or individual that contracts with the board for the third-party claims administration of the self-insured plan shall prepare and keep on file an explanation of benefits for each claim processed. The explanation of benefits shall contain such information relative to each processed claim that the board deems necessary, and, at a minimum, each explanation shall provide the claimant's name, claim number, provider number, provider name, service dates, type of services, amount of charges, amount allowed to the claimant and reason codes. The information contained in the explanation of benefits shall be available for inspection upon request by the board. The board shall have access to all claims information utilized in the issuance of payments to employees and providers.

(b) There is created an advisory council to advise the board in the formulation of the State and School Employees Health Insurance Plan. The council shall be composed of the State Insurance Commissioner, or his designee, an employee-representative of the state institutions of higher learning appointed by the board of trustees thereof, an employee-representative of the Mississippi Department of Transportation appointed by the director thereof, an employee-representative of the Department of

Revenue appointed by the Commissioner of Revenue, an employee-representative of the State Department of Health appointed by the State Health Officer, an employee-representative of the Mississippi Department of Corrections appointed by the Commissioner of Corrections, and an employee-representative of the Mississippi Department of Human Services appointed by the Executive Director of Human Services, two (2) certificated public school administrators appointed by the State Board of Education, two (2) certificated classroom teachers appointed by the State Board of Education, a noncertificated school employee appointed by the State Board of Education and a community/junior college employee appointed by the Mississippi Community College Board.

The Lieutenant Governor may designate the Secretary of the Senate, the Chairman of the Senate Appropriations Committee, the Chairman of the Senate Education Committee and the Chairman of the Senate Insurance Committee, and the Speaker of the House of Representatives may designate the Clerk of the House, the Chairman of the House Appropriations Committee, the Chairman of the House Education Committee and the Chairman of the House Insurance Committee, to attend any meeting of the State and School Employees Insurance Advisory Council. The appointing authorities may designate an alternate member from their respective houses to serve when the regular designee is unable to attend the meetings of the council. Those designees shall have no jurisdiction or vote on any matter within the jurisdiction of the council. For attending meetings of the council, the legislators shall receive per diem and expenses, which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the council will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the council without prior approval of the proper committee in their respective houses.

(c) No change in the terms of the State and School Employees Health Insurance Plan may be made effective unless the board, or its designee, has provided notice to the State and School Employees Health Insurance Advisory Council and has called a meeting of the council at least fifteen (15) days before the effective date of the change. If the State and School Employees Health Insurance Advisory Council does not meet to advise the board on the proposed changes, the changes to the plan will become effective at such time as the board has informed the council that the changes will become effective.

(d) Lifetime maximum: The lifetime maximum amount of benefits payable under the health insurance plan for each participant is Two Million Dollars (\$2,000,000.00).

(2) Nonduplication of benefits — reduction of benefits by Title XIX benefits: When benefits would be payable under more than one (1) group plan, benefits under those plans will be coordinated to the extent that the total benefits under all plans will not exceed the total expenses incurred.

Benefits for hospital or surgical or medical benefits shall be reduced by any similar benefits payable in accordance with Title XIX of the Social Security Act or under any amendments thereto, or any implementing legislation.

Benefits for hospital or surgical or medical benefits shall be reduced by any similar benefits payable by workers' compensation.

(3)(a) Schedule of life insurance benefits — group term: The amount of term life insurance for each active employee of a department, agency or institution of the state government shall not be in excess of One Hundred Thousand Dollars (\$100,000.00), or twice the amount of the employee's annual wage to the next highest One Thousand Dollars (\$1,000.00), whichever may be less, but in no case less than Thirty Thousand Dollars (\$30,000.00), with a like amount for accidental death and dismemberment on a twenty-four-hour basis.

(b) Effective October 1, 1999, schedule of life insurance benefits — group term: The amount of term life insurance for each active employee of any school district, community/junior college, public library, university-based program authorized under Section 37-23-31 for deaf, aphasic and emotionally disturbed children, or any regular nonstudent bus driver shall not be in excess of One Hundred Thousand Dollars (\$100,000.00), or twice the amount of the employee's annual wage to the next highest One Thousand Dollars (\$1,000.00), whichever may be less, but in no case less than Thirty Thousand Dollars (\$30,000.00), with a like amount for accidental death and dismemberment on a twenty-four-hour basis. The plan will further contain a premium waiver provision if a covered employee of any school district, community/junior college, public library, university-based program authorized under Section 37-23-31 for deaf, aphasic and emotionally disturbed children, or any regular nonstudent bus driver becomes totally and permanently disabled before age sixty-five (65) years.

(4) Any eligible employee who on March 1, 1971, was participating in a group life insurance program that has provisions different from those included in this article and for which the State of Mississippi was paying a part of the premium may, at his discretion, continue to participate in that plan. The employee shall pay in full all additional costs, if any, above the minimum program established by this article. Under no circumstances shall any individual who begins employment with the state after March 1, 1971, be eligible for the provisions of this subsection.

(5) The board may offer medical savings accounts as defined in Section 71-9-3 as a plan option.

(6) Any premium differentials, differences in coverages, discounts determined by risk or by any other factors shall be uniformly applied to all active employees participating in the insurance plan. It is the intent of the Legislature that the state contribution to the plan be the same for each employee throughout the state.

(7) On October 1, 1999, any school district, community/junior college district or public library may elect to remain with an existing policy or

policies of group life insurance with an insurance company approved by the State and School Employees Health Insurance Management Board, in lieu of participation in the State and School Life Insurance Plan. On or after July 1, 2004, until October 1, 2004, any school district, community/junior college district or public library may elect to choose a policy or policies of group life insurance existing on October 1, 1999, with an insurance company approved by the State and School Employees Health Insurance Management Board in lieu of participation in the State and School Life Insurance Plan. The state's contribution of up to fifty percent (50%) of the active employee's premium under the State and School Life Insurance Plan may be applied toward the cost of coverage for full-time employees participating in the approved life insurance company group plan. For purposes of this subsection (7), "life insurance company group plan" means a plan administered or sold by a private insurance company. After October 1, 1999, the board may assess charges in addition to the existing State and School Life Insurance Plan rates to those employees as a condition of enrollment in the State and School Life Insurance Plan. In order for any life insurance company group plan to be approved by the State and School Employees Health Insurance Management Board under this subsection (7), it shall meet the following criteria:

(a) The insurance company offering the group life insurance plan shall be rated "A-" or better by A.M. Best state insurance rating service and be licensed as an admitted carrier in the State of Mississippi by the Mississippi Department of Insurance.

(b) The insurance company group life insurance plan shall provide the same life insurance, accidental death and dismemberment insurance and waiver of premium benefits as provided in the State and School Life Insurance Plan.

(c) The insurance company group life insurance plan shall be fully insured, and no form of self-funding life insurance by the company shall be approved.

(d) The insurance company group life insurance plan shall have one (1) composite rate per One Thousand Dollars (\$1,000.00) of coverage for active employees regardless of age.

(e) The insurance company and its group life insurance plan shall comply with any administrative requirements of the State and School Employees Health Insurance Management Board. If any insurance company providing group life insurance benefits to employees under this subsection (7) fails to comply with any requirements specified in this subsection or any administrative requirements of the board, the state shall discontinue providing funding for the cost of that insurance.

SOURCES: Codes, 1942, § 5834-135; Laws, 1971, ch. 523, § 5; Laws, 1972, ch. 537, § 2; Laws, 1976, ch. 477, § 1; Laws, 1980, ch. 341, § 1; Laws, 1981, ch. 324, § 1; Laws, 1984, ch. 488, § 145; Laws, 1987, ch. 427; Laws, 1999, ch. 511, § 3; Laws, 2002, ch. 636, § 5; Laws, 2004, ch. 564, § 2; Laws, 2005, 2nd Ex Sess, ch. 106, § 2; Laws, 2008, ch. 560, § 1; brought forward without change,

Laws, 2009, ch. 434, § 2; Laws, 2013, ch. 478, § 3, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment, in both versions of the section, added the fourth sentence in (1)(a), and in (1)(b), substituted “Department of Revenue” for “State Tax Commission” in the second sentence, substituted “Mississippi Community College Board” for “State Board for Community and Junior Colleges” at the end.

§ 25-15-15. Payment of premiums; active full-time employees assessed portion of active employee premium under certain circumstances; purchase of additional coverage; late charges and interest penalties; State Employees Insurance Fund; Insurance Reserve Fund [Repealed effective July 1, 2015].

[Through June 30 of the year in which Section 25-11-143 becomes effective as provided in subsection (1) of Section 25-11-143, this section shall read as follows:]

(1) The board is authorized to determine the manner in which premiums and contributions by the state agencies, local school districts, colleges, universities, community/junior colleges and public libraries shall be collected to provide the self-insured health insurance program for employees as provided under this article. The state shall provide fifty percent (50%) of the cost of the above life insurance plan for all active full-time employees. The state shall provide one hundred percent (100%) of the cost of the health insurance plan for active full-time employees initially employed before January 1, 2006, except as otherwise provided in this section. For active full-time employees initially employed on or after January 1, 2006, the state shall provide one hundred percent (100%) of the cost of a basic level of health insurance, except as otherwise provided in this section, and the employees may pay additional amounts to purchase additional benefits or levels of coverage offered under the plan. The board, if determined to be necessary, may assess active full-time employees a portion of the active employee premium in an amount not to exceed Twenty Dollars (\$20.00) per month, notwithstanding any language in this section to the contrary. All active full-time employees shall be given the opportunity to purchase coverage for their eligible dependents with the premiums for such dependent coverage, as well as the employee's fifty percent (50%) share for his life insurance coverage, to be deductible from the employee's salary by the agency, department or institution head, which deductions, together with the fifty percent (50%) share of such life insurance premiums of such employing agency, department or institution head from funds appropriated to or authorized to be expended by the employing agency, department or institution head, shall be deposited directly into a depository bank or special fund in the State Treasury, as determined by the board. These funds and interest earned on these funds may be used for the disbursement of claims and shall be exempt from the appropriation process.

(2) The state shall provide annually, by line item in the Mississippi Library Commission appropriation bill, such funds to pay one hundred percent

(100%) of the cost of health insurance under the State and School Employees Health Insurance Plan, or any lesser percentage of the cost that is not assessed to the employees by the board, for full-time library staff members in each public library in Mississippi initially employed before January 1, 2006. For full-time library staff members initially employed on or after January 1, 2006, the state shall provide one hundred percent (100%) of the cost of a basic level of health insurance under the State and School Employees Health Insurance Plan, or any lesser percentage of the cost that is not assessed to the employees by the board, and the employees may pay additional amounts to purchase additional benefits or levels of coverage offered under the plan. The commission shall allot to each public library a sufficient amount of those funds appropriated to pay the costs of insurance for eligible employees. Any funds so appropriated by line item which are not expended during the fiscal year for which such funds were appropriated shall be carried forward for the same purposes during the next succeeding fiscal year. If any premiums for the health insurance and/or late charges and interest penalties are not paid by a public library in a timely manner, as defined by the board, the Mississippi Library Commission, upon notice by the board, shall immediately withhold all subsequent disbursements of funds to that public library.

(3) The state shall annually provide one hundred percent (100%) of the cost of the health insurance plan, or any lesser percentage of the cost that is not assessed to the employees by the board, for public school district employees who work no less than twenty (20) hours during each week and regular nonstudent school bus drivers, if such employees and school bus drivers were initially employed before January 1, 2006. For such employees and school bus drivers initially employed on or after January 1, 2006, the state shall provide one hundred percent (100%) of the cost of a basic level of health insurance under the State and School Employees Health Insurance Plan, or any lesser percentage of the cost that is not assessed to the employees by the board, and the employees may pay additional amounts to purchase additional benefits or levels of coverage offered under the plan. Where federal funding is allowable to defray, in full or in part, the cost of participation in the program by district employees who work no less than twenty (20) hours during the week and regular nonstudent bus drivers, whose salaries are paid, in full or in part, by federal funds, the allowance under this section shall be reduced to the extent of such federal funding. Where the use of federal funds is allowable but not available, it is the intent of the Legislature that school districts contribute the cost of participation for such employees from local funds, except that parent fees for child nutrition programs shall not be increased to cover such cost.

(4) The state shall provide annually, by line item in the community/junior college appropriation bill, such funds to pay one hundred percent (100%) of the cost of the health insurance plan, or any lesser percentage of the cost that is not assessed to the employees by the board, for community/junior college district employees initially employed before January 1, 2006, who work no less than twenty (20) hours during each week. For such employees initially employed on or after January 1, 2006, the state shall provide one hundred

percent (100%) of the cost of a basic level of health insurance under the State and School Employees Health Insurance Plan, or any lesser percentage of the cost that is not assessed to the employees by the board, and the employees may pay additional amounts to purchase additional benefits or levels of coverage offered under the plan.

(5) When the use of federal funding is allowable to defray, in full or in part, the cost of participation in the insurance plan by community/junior college district employees who work no less than twenty (20) hours during each week, whose salaries are paid, in full or in part, by federal funds, the allowance under this section shall be reduced to the extent of the federal funding. Where the use of federal funds is allowable but not available, it is the intent of the Legislature that community/junior college districts contribute the cost of participation for such employees from local funds.

(6) Any community/junior college district may contribute to the cost of coverage for any district employee from local community/junior college district funds, and any public school district may contribute to the cost of coverage for any district employee from nonminimum program funds. Any part of the cost of such coverage for participating employees of public school districts and public community/junior college districts that is not paid by the state shall be paid by the participating employees, which shall be deducted from the salaries of the employees in a manner determined by the board.

(7) Any funds appropriated for the cost of insurance by line item in the community/junior colleges appropriation bill which are not expended during the fiscal year for which such funds were appropriated shall be carried forward for the same purposes during the next succeeding fiscal year.

(8) The board may establish and enforce late charges and interest penalties or other penalties for the purpose of requiring the prompt payment of all premiums for life and health insurance permitted under this chapter. All funds in excess of the amount needed for disbursement of claims shall be deposited in a special fund in the State Treasury to be known as the State and School Employees Insurance Fund. The State Treasurer shall invest all funds in the State and School Employees Insurance Fund and all interest earned shall be credited to the State and School Employees Insurance Fund. Such funds shall be placed with one or more depositories of the state and invested on the first day such funds are available for investment in certificates of deposit, repurchase agreements or in United States Treasury bills or as otherwise authorized by law for the investment of Public Employees' Retirement System funds, as long as such investment is made from competitive offering and at the highest and best market rate obtainable consistent with any available investment alternatives; however, such investments shall not be made in shares of stock, common or preferred, or in any other investments which would mature more than one (1) year from the date of investment. The board shall have the authority to draw from this fund periodically such funds as are necessary to operate the self-insurance plan or to pay to the insurance carrier the cost of operation of this plan, it being the purpose to limit the amount of participation by the state to fifty percent (50%) of the cost of the life insurance program and

not to limit the contracting for additional benefits where the cost will be paid in full by the employee. The state shall not share in the cost of coverage for retired employees.

(9) The board shall also provide for the creation of an Insurance Reserve Fund and funds therein shall be invested by the State Treasurer with all interest earned credited to the State and School Employees Insurance Fund.

(10) Any retired employee electing to purchase retired life and health insurance will have the full cost of such insurance deducted monthly from his State of Mississippi retirement plan check or direct billed for the cost of the premium if the retirement check is insufficient to pay for the premium. If the board determines actuarially that the premium paid by the participating retirees adversely affects the overall cost of the plan to the state, then the board may impose a premium surcharge, not to exceed fifteen percent (15%), upon such participating retired employees who are under the age for Medicare eligibility and who were initially employed before January 1, 2006. For participating retired employees who are under the age for Medicare eligibility and who were initially employed on or after January 1, 2006, the board may impose a premium surcharge in an amount the board determines actuarially to cover the full cost of insurance.

(11) This section shall stand repealed on July 1, 2015.

[From and after July 1 of the year in which Section 25-11-143 becomes effective as provided in subsection (1) of Section 25-11-143, this section shall read as follows:]

(1) The board may determine the manner in which premiums and contributions by the state agencies, local school districts, colleges, universities, community/junior colleges and public libraries will be collected to provide the self-insured health insurance program for employees as provided under this article. The state shall provide fifty percent (50%) of the cost of the above life insurance plan for all active full-time employees. The state shall provide one hundred percent (100%) of the cost of the health insurance plan for active full-time employees initially employed before January 1, 2006, except as otherwise provided in this section. For active full-time employees initially employed on or after January 1, 2006, the state shall provide one hundred percent (100%) of the cost of a basic level of health insurance, except as otherwise provided in this section, and the employees may pay additional amounts to purchase additional benefits or levels of coverage offered under the plan. The board, if determined to be necessary, may assess active full-time employees a portion of the active employee premium in an amount not to exceed Twenty Dollars (\$20.00) per month, notwithstanding any language in this section to the contrary. All active full-time employees shall be given the opportunity to purchase coverage for their eligible dependents with the premiums for the dependent coverage, as well as the employee's fifty percent (50%) share for his life insurance coverage, to be deductible from the employee's salary by the agency, department or institution head. Those deductions, together with the fifty percent (50%) share of the life insurance premiums of

the employing agency, department or institution head from funds appropriated to or authorized to be expended by the employing agency, department or institution head, shall be deposited directly into a depository bank or special fund in the State Treasury, as determined by the board. These funds and interest earned on these funds may be used for the disbursement of claims and shall be exempt from the appropriation process.

(2) The state shall provide annually, by line item in the Mississippi Library Commission appropriation bill, the funds to pay one hundred percent (100%) of the cost of health insurance under the State and School Employees Health Insurance Plan, or any lesser percentage of the cost that is not assessed to the employees by the board, for all full-time library staff members in each public library in Mississippi initially employed before January 1, 2006. For full-time library staff members initially employed on or after January 1, 2006, the state shall provide one hundred percent (100%) of the cost of a basic level of health insurance under the State and School Employees Health Insurance Plan, or any lesser percentage of the cost that is not assessed to the employees by the board, and the employees may pay additional amounts to purchase additional benefits or levels of coverage offered under the plan. The commission shall allot to each public library a sufficient amount of those funds appropriated to pay the costs of insurance for eligible employees. Any funds so appropriated by line item that are not expended during the fiscal year for which the funds were appropriated shall be carried forward for the same purposes during the next succeeding fiscal year. If any premiums for the health insurance and/or late charges and interest penalties are not paid by a public library in a timely manner, as defined by the board, the Mississippi Library Commission, upon notice by the board, shall immediately withhold all subsequent disbursements of funds to that public library.

(3) The state shall annually provide one hundred percent (100%) of the cost of the health insurance plan, or any lesser percentage of the cost that is not assessed to the employees by the board, for public school district employees who work no less than twenty (20) hours during each week and regular nonstudent school bus drivers, if such employees and school bus drivers were initially employed before January 1, 2006. For such employees and school bus drivers initially employed on or after January 1, 2006, the state shall provide one hundred percent (100%) of the cost of a basic level of health insurance under the State and School Employees Health Insurance Plan, or any lesser percentage of the cost that is not assessed to the employees by the board, and the employees may pay additional amounts to purchase additional benefits or levels of coverage offered under the plan. Where federal funding is allowable to defray, in full or in part, the cost of participation in the program by district employees who work no less than twenty (20) hours during the week and regular nonstudent bus drivers, whose salaries are paid, in full or in part, by federal funds, the allowance under this section shall be reduced to the extent of that federal funding. Where the use of federal funds is allowable but not available, it is the intent of the Legislature that school districts contribute the cost of participation for the employees from local funds, except that parent fees for child nutrition programs shall not be increased to cover that cost.

(4) The state shall provide annually, by line item in the community/junior college appropriation bill, the funds to pay one hundred percent (100%) of the cost of the health insurance plan, or any lesser percentage of the cost that is not assessed to the employees by the board, for community/junior college district employees initially employed before January 1, 2006, who work no less than twenty (20) hours during each week. For such employees initially employed on or after January 1, 2006, the state shall provide one hundred percent (100%) of the cost of a basic level of health insurance under the State and School Employees Health Insurance Plan, or any lesser percentage of the cost that is not assessed to the employees by the board, and the employees may pay additional amounts to purchase additional benefits or levels of coverage offered under the plan.

(5) When the use of federal funding is allowable to defray, in full or in part, the cost of participation in the insurance plan by community/junior college district employees who work no less than twenty (20) hours during each week, whose salaries are paid, in full or in part, by federal funds, the allowance under this section shall be reduced to the extent of the federal funding. Where the use of federal funds is allowable but not available, it is the intent of the Legislature that community/junior college districts contribute the cost of participation for the employees from local funds.

(6) Any community/junior college district may contribute to the cost of coverage for any district employee from local community/junior college district funds, and any public school district may contribute to the cost of coverage for any district employee from nonminimum program funds. Any part of the cost of the coverage for participating employees of public school districts and public community/junior college districts that is not paid by the state shall be paid by the participating employees, which shall be deducted from the salaries of the employees in a manner determined by the board.

(7) Any funds appropriated for the cost of insurance by line item in the community/junior colleges appropriation bill that are not expended during the fiscal year for which the funds were appropriated shall be carried forward for the same purposes during the next succeeding fiscal year.

(8) The board may establish and enforce late charges and interest penalties or other penalties for the purpose of requiring the prompt payment of all premiums for life and health insurance permitted under Chapter 15 of Title 25. All funds in excess of the amount needed for disbursement of claims shall be deposited in a special fund in the State Treasury to be known as the State and School Employees Insurance Fund. The State Treasurer shall invest all funds in the State and School Employees Insurance Fund and all interest earned shall be credited to the State and School Employees Insurance Fund. Those funds shall be placed with one or more depositories of the state and invested on the first day that the funds are available for investment in certificates of deposit, repurchase agreements or in United States Treasury bills or as otherwise authorized by law for the investment of Public Employees' Retirement System funds, as long as the investment is made from competitive offering and at the highest and best market rate obtainable consistent with

any available investment alternatives. However, those investments shall not be made in shares of stock, common or preferred, or in any other investments that would mature more than one (1) year from the date of investment. The board shall have the authority to draw from this fund periodically such funds as are necessary to operate the self-insurance plan or to pay to the insurance carrier the cost of operation of this plan, it being the purpose to limit the amount of participation by the state to fifty percent (50%) of the cost of the life insurance program and not to limit the contracting for additional benefits where the cost will be paid in full by the employee.

(9) The board shall also provide for the creation of an Insurance Reserve Fund, and funds in the reserve fund shall be invested by the State Treasurer with all interest earned credited to the State and School Employees Insurance Fund.

(10) This section shall stand repealed on July 1, 2015.

SOURCES: Codes, 1942, § 5834-138; Laws, 1971, ch. 523, § 8; Laws, 1972, ch. 537, § 5; Laws, 1977, ch. 494, § 2; Laws, 1983, ch. 437; Laws, 1984, ch. 488, § 148; Laws, 1986, ch. 452; Laws, 1991, ch. 506 § 1; Laws, 1993, ch. 393, § 1; Laws, 1993, ch. 533, § 5; Laws, 1994, ch. 615, § 7; Laws, 1999, ch. 511, § 7; Laws, 2002, ch. 636, § 8; Laws, 2005, 2nd Ex Sess, ch. 106, § 1; Laws, 2010, ch. 510, § 1; Laws, 2012, ch. 380, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment provided for two versions of the section, in the first version effective through June 30 of the year in which Section 25-11-143 becomes effective, extended the repealer provision from “July 1, 2012” to “July 1, 2015” in (11); in the second version effective from and after July 1 of the year in which Section 25-11-143 becomes effective, extended the repealer provision from “July 1, 2012” to “July 1, 2015” in (10).

ARTICLE 3.

GROUP INSURANCE FOR EMPLOYEES OF LOCAL GOVERNMENTS AND THEIR INSTITUTIONS AND AGENCIES.

SEC.
25-15-101. Administration of insurance program; self-insurance; liability for payment of benefits and loss or misappropriation of funds.

§ 25-15-101. Administration of insurance program; self-insurance; liability for payment of benefits and loss or misappropriation of funds.

The governing board of any county, municipality, municipal separate school district, other school district or junior college district, and the governing board or head of any institution, department or agency of any county or municipality may negotiate for and secure for all or specified groups of employees and their dependents of such county or municipality, or institution, department or agency of such county or municipality, or municipal separate school district, other school district or junior college district, a policy or policies of group insurance covering the life, (except as hereinafter provided), salary

protection, health, accident and hospitalization, as well as a group contract or contracts covering hospital and/or medical and/or surgical services or benefits (including surgical costs, so-called "hospital extras," medical expenses, allied coverages, and major medical costs) of such of its employees and their dependents as may desire such insurance and other coverage under such service or benefit contracts, and who shall authorize in writing the deduction from the salary or wages of such employees of the proportionate part of the costs thereof attributable to such employees. However, beginning with the 1984-1985 school year, school districts shall provide the policies of group insurance to certificated personnel. Any employee who desires to reallocate or reduce any part of his or her salary or wages for a cafeteria fringe benefit plan in accordance with current requirements of Section 125 et seq. of the Internal Revenue Code for himself or herself and/or for his or her dependent(s) shall authorize, in writing, the deduction from the salary or wages of such employee the proportionate part of the costs thereof attributable to such employee. Any amount so deducted shall be transferred into the general fund or contingent fund of such county or municipality, or the operating fund of such institution, department or agency of the county or municipality, or the maintenance fund of such municipal separate school district, other school district or junior college district, as the case may be, and shall be supplemented by funds from the general fund, contingent fund, maintenance fund, or operating fund, as the case may be, in an amount to be determined by the governing board or head of such political subdivision, school district, junior college district, institution, department or agency, in their discretion, in order to pay the full costs. In no instances shall the amount of contributions by any governing board or head of a political subdivision, school district, junior college district, institution, department or agency hereinabove mentioned exceed an average of one hundred percent (100%) of the cost of all such group coverages for employees.

The governing board or head of such political subdivision, school district, junior college district, institution, department or agency is authorized to pay such full costs direct to the insurance company and to the hospital and/or medical and/or surgical service association from the general fund, contingent fund, or the maintenance fund of such county or municipality, or the operating fund of such institution, department, or agency of the county or municipality, or the maintenance fund of such municipal separate school district, other school district or junior college district, as the case may be, and to do all acts necessary and proper for the purpose of carrying out the provisions of Sections 25-15-101 and 25-15-103 and of effectuating the purposes hereof. The rates for any and all costs covered by the sections shall be in keeping with promulgated schedules, and the rates for such costs shall be approved by the Insurance Commissioner of the State of Mississippi. This section shall not be construed to prevent changes in rates based on experience, nor the granting of dividends or rate reductions or credits.

The governing board or head of any political subdivision or other entity set forth in this section may elect to become a self-insurer with respect to all or any portion of group life, salary protection, health, accident and hospitalization

benefits on terms and conditions deemed advisable, in its discretion. The administration and service of any such self-insurance program shall be contracted to a third party approved by the Commissioner of Insurance and benefits provided in excess of the self-insurance plan shall be covered by a policy or policies of group insurance or a group contract or contracts issued by a company licensed to do business in this state.

The governing board of any political subdivision or other entity set forth in this section may join with any one or more other such political subdivision or entity to pool the risks authorized to be insured or self-insured under this section or to act as a self-insurer, or to contract for a policy or policies of insurance, or to contract with a third-party administrator for a self-insurance plan; however, in order to qualify as a self-insurer, a group, whether consisting of one or more employers, shall consist of not less than one hundred twenty-five (125) employees.

Any political subdivision or other entity that provides any plan of group insurance or other coverage under this section does not waive, but expressly reserves, its sovereign immunity under the laws of the State of Mississippi; and all plans and agreements executed by political subdivisions and other entities providing insurance or other coverage under this section shall contain a provision expressly limiting liability for the payment of all benefits for single or multiple claims to the extent of the insurance carried or to the extent of funds available under the self-insurance fund.

Nothing in Sections 25-15-101 and 25-15-103 shall be construed to apply to agencies financed entirely by federally granted administrative funds.

Any governing board or head of any political subdivision or other entity that provides any plan of group insurance or other coverage under this section, and any person with whom such governing board, head of a political subdivision or other entity contracts in the performance of any duty or authority prescribed under this section, shall be liable civilly for the loss or misappropriation of any public funds resulting from their failure to comply with any provision of this section, such funds to be recovered in the manner provided under Section 7-7-211.

SOURCES: Codes, 1942, § 5649; Laws, 1940, ch. 141; Laws, 1950, ch. 417, § 3; Laws, 1956, ch. 335, § 2; Laws, 1958, ch. 435, § 3; Laws, 1962, ch. 454, §§ 3, 4; Laws, 1964, ch. 469, §§ 2, 3 [subs. 1, 2]; Laws, 1966, ch. 521, § 2; Laws, 1968, ch. 477, §§ 1-4; Laws, 1970, ch. 447, § 1; Laws, 1970, ch. 448, § 1; Laws, 1971, ch. 523, § 15; Laws, 1971, ch. 523, § 14; Laws, 1974, ch. 535, § 1; Laws, 1977, ch. 496, § 1; Laws, 1982, ch. 362, § 2; Laws, 1982, Ex Sess, ch. 17, § 28; Laws, 1985, ch. 466, § 2; Laws, 1986, ch. 477; Laws, 1988, ch. 460, § 1; Laws, 1991, ch. 558, § 10; Laws, 1991, ch. 566, § 1; Laws, 1995, ch. 492, § 1; Laws, 2009, ch. 439, § 1, eff from and after passage (approved Mar. 26, 2009.)

Editor's Note — This section is set out above to correct the Sources information as it appeared in the 2010 replacement volume.

ARTICLE 9.

ADMINISTRATION OF GROUP INSURANCE PLANS.

SEC.
25-15-303. State and Public School Employees Health Insurance Management Board.

§ 25-15-303. State and Public School Employees Health Insurance Management Board.

(1) There is created the State and School Employees Health Insurance Management Board, which shall administer the State and School Employees Life and Health Insurance Plan provided for under Section 25-15-3 et seq. The State and School Employees Health Insurance Management Board, hereafter referred to as the “board,” shall also be responsible for administering all procedures for selecting third-party administrators provided for in Section 25-15-301.

(2) The board shall consist of the following:

- (a) The Chairman of the Workers’ Compensation Commission;
- (b) The State Personnel Director;
- (c) The Commissioner of Insurance, or his designee;
- (d) The Commissioner of Higher Education;
- (e) The State Superintendent of Public Education;
- (f) The Executive Director of the Department of Finance and Administration;
- (g) The Executive Director of the State Board for Community and Junior Colleges;
- (h) The Executive Director of the Public Employees’ Retirement System;
- (i) Two (2) appointees of the Governor whose terms shall be concurrent with that of the Governor, one (1) of whom shall have experience in providing actuarial advice to companies that provide health insurance to large groups and one (1) of whom shall have experience in the day-to-day management and administration of a large self-funded health insurance group;
- (j) The Chairman of the Senate Insurance Committee, or his designee;
- (k) The Chairman of the House of Representatives Insurance Committee, or his designee;
- (l) The Chairman of the Senate Appropriations Committee, or his designee; and
- (m) The Chairman of the House of Representatives Appropriations Committee, or his designee.

The legislators, or their designees, shall serve as ex officio, nonvoting members of the board.

The Executive Director of the Department of Finance and Administration shall be the chairman of the board.

(3) The board shall meet at least monthly and maintain minutes of the meetings. A quorum shall consist of a majority of the authorized voting

membership of the board. The board shall have the sole authority to promulgate rules and regulations governing the operations of the insurance plans and shall be vested with all legal authority necessary and proper to perform this function including, but not limited to:

- (a) Defining the scope and coverages provided by the insurance plan;
- (b) Seeking proposals for services or insurance through competitive processes where required by law and selecting service providers or insurers under procedures provided for by law; and
- (c) Developing and adopting strategic plans and budgets for the insurance plan.

The department shall employ a State Insurance Administrator, who shall be responsible for the day-to-day management and administration of the insurance plan. The Department of Finance and Administration shall provide to the board on a full-time basis personnel and technical support necessary and sufficient to effectively and efficiently carry out the requirements of this section.

(4) Members of the board shall not receive any compensation or per diem, but may receive travel reimbursement provided for under Section 25-3-41 except that the legislators shall receive per diem and expenses, which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the board shall be paid while the Legislature is in session.

SOURCES: Laws, 1997, ch. 606, § 10; Laws, 1999, ch. 511, § 13; Laws, 2005, ch. 408, § 1; Laws, 2007, ch. 435, § 1; Laws, 2012, ch. 347, § 1; Laws, 2012, ch. 349, § 1, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 1 of ch. 347, Laws, 2012, effective July 1, 2012, amended this section. Section 1 of ch. 349, Laws, 2012, effective from and after July 1, 2012, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Editor's Note — Section 37-4-5 provides that the terms "Junior College Commission" and "State Board for Community and Junior Colleges," wherever they appear in the laws of Mississippi, shall mean the "Mississippi Community College Board."

Amendment Notes — The first 2012 amendment (ch. 347), added "or his designee" at the end of (2)(c).

The second 2012 amendment (ch. 349), deleted the former second through fourth sentences of the last paragraph in (3) which read: "The board shall employ a Deputy State Insurance Administrator who shall be an actuary and a member of the American Academy of Actuaries. The Deputy State Insurance Administrator shall have experience in providing actuarial services to companies that provide health insurance to large groups. The deputy administrator shall receive a salary set by the board and shall not be subject to the authority of the State Personnel Board for any purpose."

CHAPTER 31
District Attorneys

- SEC.
- 25-31-10.1. Supplemental salary, expenses and fringe benefits for district attorneys, legal assistants and criminal investigators.
- 25-31-43. Retention of one service-issued sidearm by district attorney, legal assistant to district attorney or criminal investigator employed by district attorney upon retirement.

§ 25-31-10.1. Supplemental salary, expenses and fringe benefits for district attorneys, legal assistants and criminal investigators.

In addition to the salaries, expenses and fringe benefits of district attorneys and legal assistants authorized by Section 25-3-35(5) and (6) and criminal investigators authorized by Section 25-31-10(5), the salary of a district attorney may be supplemented in an amount not to exceed Eight Thousand Three Hundred Dollars (\$8,300.00) per year; the salary of a legal assistant may be supplemented in an amount not to exceed Six Thousand Dollars (\$6,000.00) per year; and the salary of a criminal investigator may be supplemented in an amount not to exceed Five Thousand Dollars (\$5,000.00) per year, payable monthly. The supplemental salary, expenses and fringe benefits authorized herein may be paid from office-generated funds, funds from a county, a combination of counties, a municipality, a combination of municipalities, a county and a municipality, a combination of counties and municipalities, federal funds, grants from private foundations, or by means of an Interlocal Cooperative Agreement authorized by Section 17-13-1. The district attorney shall report to the board of supervisors of each county comprising the circuit court district the amount and source of the supplemental salary, expenses and fringe benefits, and the board in each county shall spread the same on its minutes. The district attorney shall also report such information to the Department of Finance and Administration who shall make such information available to the Legislative Budget Office. The supplemental salary, expenses and fringe benefits may either be paid from district attorney accounts, transferred by the district attorney to the Department of Finance and Administration or to one or more of the separate counties comprising the circuit court district, and such funds shall be disbursed to the employees in the same manner as state-funded criminal investigators and full-time legal assistants.

SOURCES: Laws, 2010, ch. 530, § 1, eff June 10, 2010, (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section by deleting the subsection (1) designation

preceding “In addition to the salaries ...” at the beginning of the section. The Joint Committee ratified the correction at its July 13, 2011, meeting.

§ 25-31-43. Retention of one service-issued sidearm by district attorney, legal assistant to district attorney or criminal investigator employed by district attorney upon retirement.

Any district attorney, legal assistant to a district attorney or criminal investigator employed by a district attorney who retires under the Public Employees’ Retirement System for superannuation or for reason of disability shall be allowed to retain, as his personal property, one (1) sidearm which was issued under authority of Section 97-37-7. The replacement cost of the sidearm shall come from funds appropriated to the district attorney other than those funds appropriated from State General Funds.

SOURCES: Laws, 2011, ch. 535, § 2, eff from and after July 1, 2011.

CHAPTER 32

Public Defenders

In General	25-32-1
Mississippi Public Defender Task Force	25-32-71

IN GENERAL

SEC.	
25-32-1.	Establishment of office by board of supervisors.
25-32-3.	Circuit judge shall appoint public defender for county; assistant public defender.
25-32-5.	Compensation; private practice of law.
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25-32-11.	Duties; free access to accused.
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25-32-17.	Compensation, staff, office space, and secretarial assistance not to be reduced; authority to increase.
25-32-19.	Obtaining financial, professional, investigatory, research, or other assistance.
25-32-21.	Omitted.

§ 25-32-1. Establishment of office by board of supervisors.

Should the board of supervisors of any county or the boards of supervisors of two (2) or more counties in the same circuit court district determine by order spread upon their minutes that the county or counties have a sufficient number of indigent defendant cases to establish an office of public defender, the board of supervisors or boards of supervisors are authorized and empowered,

in their discretion, to establish the office, provide office space, personnel and funding for the office, and to perform any and all functions necessary for the efficient operation of such an office to the end that adequate legal defense for indigent persons accused of crime shall be provided at every critical stage of their cases as an alternative to court appointed counsel. Said order shall specify whether the public defender shall be full-time or part-time.

SOURCES: Laws, 1979, ch. 509, § 1, eff from and after October 1, 1979.

Editor's Note — Laws of 1979, ch. 509, § 11, effective from and after October 1, 1979, provides:

"SECTION 11. This act shall not affect counties which presently have public defender offices in operation on October 1, 1979, but shall be supplemental and cumulative to all local and private acts."

This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

"(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State."

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

Cross References — Exemption of certain attorneys' work product from requirement of public access, see § 25-1-102.

ATTORNEY GENERAL OPINIONS

Under Sections 25-32-1 and 25-32-3, the board of supervisors may establish a public defender's office with a part-time public defender and a part-time assistant public defender. However, it shall be the duty of the public defender to select and appoint any assistant public defenders authorized by the board of supervisors. Chamberlin, September 7, 1995, A.G. Op. #95-0611.

If a county has established an office of public defender under § 25-32-1 et seq., a justice court judge has the authority to order the public defender to represent an indigent criminal defendant on a misde-

meanor charge that may lead to the defendant being incarcerated. Rushing, November 25, 1998, A.G. Op. #98-0711.

The Code of Judicial Conduct prohibits a person from simultaneously serving as a justice court judge and public defender. Norquist, Sept. 27, 2002, A.G. Op. #02-0556.

Part-time public defenders are county employees and afforded coverage under the Tort Claims Act while acting in the course and scope of their employment. Starrett, Aug. 1, 2003, A.G. Op. 03-0383.

RESEARCH REFERENCES

ALR. Construction and effect of statutes providing for office of public defender. 36 A.L.R.3d 1403.

Am Jur. 21A Am. Jur. 2d, Criminal Law §§ 809, 810.

§ 25-32-3. Circuit judge shall appoint public defender for county; assistant public defender.

(1) When the office of public defender is established, the circuit judge or the senior circuit judge, if there be more than one (1) circuit judge, shall appoint a practicing attorney to serve the county or counties as public defender until the end of the term of office of the district attorney and thereafter for a term of four (4) years and said term shall coincide with the term of the district attorney. Such appointee shall be selected from a list of two (2) or more attorneys recommended by the county or regional bar association. In the event a vacancy shall occur in the office of the public defender, the circuit judge or the senior circuit judge, if there be more than one (1) circuit judge, shall appoint another person to serve as public defender until the end of the regular term of office.

(2) Assistant public defenders may be authorized by the board of supervisors, or boards of supervisors if two (2) or more counties are acting jointly. The public defender shall appoint all assistant public defenders. Such assistant public defenders may be compensated in such an amount as may be authorized by the respective board of supervisors; provided, however, that in no case may such assistant public defenders receive compensation in an amount greater than that received by the public defender.

SOURCES: Laws, 1979, ch. 509, § 22, eff from and after October 1, 1979.

Editor's Note — This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

“(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State.”

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

ATTORNEY GENERAL OPINIONS

Duly appointed public defender may not delegate his or her duties and responsibilities to any other than duly and lawfully appointed assistant public defender. McDaniel, Nov. 12, 1992, A.G. Op. #92-0848.

Under Sections 25-32-1 and 25-32-3, the board of supervisors may establish a public defender's office with a part-time public defender and a part-time assistant public defender. However, it shall be the duty of the public defender to select and appoint any assistant public defenders authorized by the board of supervisors. Chamberlin, September 7, 1995, A.G. Op. #95-0611.

If the board of supervisors authorizes additional assistant public defenders, they are to be appointed by the public defender and the public defender has the authority to establish the duties and responsibilities of each assistant public defender to include who will be responsible for handling misdemeanor cases and/or preliminary hearings in justice court; there is no statutory authority for two separate county public defenders, one for circuit court and one for justice court. Haney, June 6, 2003, A.G. Op. 03-0261.

RESEARCH REFERENCES

ALR. Construction and effect of statutes providing for office of public defender. 36 A.L.R.3d 1403.

§ 25-32-5. Compensation; private practice of law.

Compensation for the public defender shall be fixed by the board of supervisors or boards of supervisors, if two (2) or more counties are acting jointly; provided, however, the compensation for a public defender, who shall be full-time, representing an entire circuit court district shall not be less than the compensation of the district attorney, the compensation for a public defender representing one (1) county shall not be less than the compensation of the county prosecuting attorney and the compensation for a public defender representing two (2) or more counties, but less than the entire circuit court district, shall not be less than the aggregate of the compensation for county prosecuting attorneys of the counties served, but in no event to exceed the compensation of the district attorney. No full-time public defender or full-time assistant public defenders shall engage nor be associated with any person in the private practice of law. Part-time public defenders or part-time assistant public defenders may engage in the private practice of the law as long as such practice does not relate to the prosecution of criminal matters.

SOURCES: Laws, 1979, ch. 509, § 3, eff from and after October 1, 1979.

Editor's Note — This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

“(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new

programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State.”

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

RESEARCH REFERENCES

ALR. Construction and effect of statute providing for office of public defender. 36 A.L.R.3d 1403. Right of public defenders to join collective bargaining unit. 108 A.L.R.5th 241

§ 25-32-7. Office and office expenses; payment of compensation and expenses.

The public defender shall be provided with office space, secretarial assistance, and all reasonable expenses of operating the office, at least equal to or more than the county prosecuting attorney, or the district attorney if the public defender represents the entire circuit court district. The compensation and expenses of the public defender's office shall be paid by the county or counties if two (2) or more counties are acting jointly. The funds shall be paid upon allowance by the board of supervisors by order spread upon the minutes of the board.

SOURCES: Laws, 1979, ch. 509, § 4, eff from and after October 1, 1979.

Editor's Note — This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

“(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State.”

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

JUDICIAL DECISIONS

1. Constitutionality.

County was properly denied declaratory judgment that Miss. Code Ann. §§ 25-32-7, and 99-15-17, requiring counties to pro-

vide legal services for indigent criminal defendants violated Miss. Const. Art. III, § 26 because the county did not show specific examples of when public defenders'

legal representation fell below the objective standard of professional reasonableness. *Quitman County v. State*, 910 So. 2d 1032 (Miss. 2005).

RESEARCH REFERENCES

ALR. Construction and effect of statutes providing for office of public defender. 36 A.L.R.3d 1403.

§ 25-32-9. Affidavit of indigency; statement of assets; representation of persons in need of mental treatment.

(1) When any person shall be arrested and charged with a felony, a misdemeanor or an act of delinquency, then the arresting authority shall afford such person an opportunity to sign an affidavit stating that such person is an indigent and unable to employ counsel. Upon the signing of such affidavit by such person, the public defender shall represent said person unless the right to counsel be waived by such person. Provided further, a statement shall be executed by the alleged indigent, under oath, listing all assets available to the indigent for the payment of attorney's fees, including the ownership of any property, real or personal, and setting out therein the alleged indigent's employment status, number of dependents, income from any source, the ability of his parents or spouse to provide an attorney's fee, and any other information which might prove or disprove a finding of indigency. The affidavit and statement shall be a part of the record in the case and shall be subject to review by the appropriate court. Based on review of the affidavit, statement or other appropriate evidence, if the appropriate court finds that the defendant is not indigent, said court shall terminate the representation of the defendant by the public defender.

When any person shall be arrested and charged with a misdemeanor, the presiding judge or justice, upon determination that the person is indigent as provided in this section, and that representation of the indigent is required, shall appoint the public defender whose duty it shall be to provide such representation. No person determined to be an indigent as provided in this section shall be imprisoned as a result of a misdemeanor conviction unless he was represented by the public defender or waived the right to counsel.

(2) The accused shall have such representation available at every critical stage of the proceedings against him where a substantial right may be affected.

(3) The public defender shall also represent persons in need of mental treatment, as provided under Sections 41-21-61 et seq. The chancery court may tax costs as provided in Sections 41-21-79 and 41-21-85.

SOURCES: Laws, 1979, ch. 509, § 5; Laws, 1980, ch. 518, eff from and after July 1, 1980.

Editor's Note — This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

"(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State."

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

Cross References — Rights of criminal accused, see Miss. Const. Art. 3, § 26.

Appointment of counsel for indigents, see § 99-15-15.

ATTORNEY GENERAL OPINIONS

An indigent defendant charged with a misdemeanor is entitled to legal representation by the public defender where a substantial right may be affected, e.g.,

when the defendant faces imprisonment for any length of time. Belk, Jr., June 30, 2000, A.G. Op. #2000-0360.

RESEARCH REFERENCES

ALR. Duty to advise accused as to right to assistance of counsel. 3 A.L.R.2d 1003.

Right of indigent defendant in criminal case to aid of state as regards new trial or appeal. 55 A.L.R.2d 1072.

Comment Note.--Constitutionally protected right of indigent accused to appointment of counsel in state court prosecution. 93 A.L.R.2d 747.

Accused's right to assistance of counsel at or prior to arraignment. 5 A.L.R.3d 1269.

Scope and extent, and remedy or sanctions for infringement, of accused's right to communicate with his attorney. 5 A.L.R.3d 1360.

Comment Note.--Necessity of informing suspect of his rights under privilege against self-incrimination, prior to police interrogation. 10 A.L.R.3d 1054.

Right of indigent defendant in criminal case to aid of state by appointment of investigator or expert. 34 A.L.R.3d 1256.

Construction and effect of statutes providing for office of public defender. 36 A.L.R.3d 1403.

Determination of indigency of accused entitling him to appointment of counsel. 51 A.L.R.3d 1108.

Indigent accused's right to choose particular counsel appointed to assist him. 66 A.L.R.3d 996.

Public defender's immunity from liability for malpractice. 6 A.L.R.4th 774.

Right of indigent defendant in state criminal case to assistance of ballistics experts. 71 A.L.R.4th 638.

Right of indigent defendant in state criminal case to assistance of fingerprint expert. 72 A.L.R.4th 87.

Right of indigent defendant in state criminal case to assistance of chemist, toxicologist, technician, narcotics expert, or similar nonmedical specialist in substance analysis. 74 A.L.R.4th 388.

Right of indigent defendant in state criminal case to assistance of investigators. 81 A.L.R.4th 259.

Alimony or child-support awards as subject to attorneys' fees. 49 A.L.R.5th 595.

Right of indigent defendant in state criminal prosecution to ex parte in camera hearing on request for state-funded expert witness. 83 A.L.R.5th 541.

Am Jur. 8 Am. Jur. Pl & Pr Forms (Rev), Criminal Procedure, Form 41 (affidavit by indigent defendant for appointment of attorney).

§ 25-32-11. Duties; free access to accused.

The duties of the public defender shall include the investigation of charges against the defendant and all facts surrounding the same, and shall include courtroom and appellate appearances on behalf of the defendant in all cases originating in state and county courts. The public defender shall have free access to the accused who shall have process to compel the attendance of witnesses in his favor.

SOURCES: Laws, 1979, ch. 509, § 6, eff from and after October 1, 1979.

Editor's Note — This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

“(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State.”

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

Cross References — Appointment of counsel for indigents, see § 99-15-15.

ATTORNEY GENERAL OPINIONS

When indigent defendant charged with felony appears for preliminary hearing before municipal judge, it is case 'originating in state and county courts' thereby requiring county public defender to appear and represent defendant. Brown, Jan. 20, 1994, A.G. Op. #93-0896.

Since county public defenders are required to represent indigent defendants charged with felonies at preliminary hearings in municipal court, city is under no obligation to compensate public defender; county that appointed public defender would be responsible for such compensation. Brown, Jan. 20, 1994, A.G. Op. #93-0896.

Section 25-32-11 provides that it is the duty of the county public defender to represent an indigent defendant at a prelimi-

nary hearing before a municipal judge. Thompson, October 11, 1996, A.G. Op. #96-0678.

When a county public defender is appointed to represent a defendant on felony charges in a municipal court preliminary hearing, the court should allow the public defender to withdraw if the felony charges are reduced to misdemeanors, the court should then determine if a court appointed attorney is appropriate on the misdemeanor charges, and if the public defender is appointed to represent the defendant on the misdemeanor charges, then the public defender is entitled to additional compensation from the municipality under Miss. Code Section 99-15-17. Tucker, Aug. 15, 1997, A.G. Op. #97-0500.

RESEARCH REFERENCES

ALR. Right of indigent defendant in criminal case to aid of state as regards new trial or appeal. 55 A.L.R.2d 1072.

Scope and extent, and remedy or sanctions for infringement, of accused's right to communicate with his attorney. 5 A.L.R.3d 1360.

Construction and effect of statutes providing for office of public defender. 36 A.L.R.3d 1403.

Am Jur. 5 Am. Jur. Proof of Facts 2d, Ineffective Assistance of Counsel, §§ 14 et seq. (proof that criminal defendant received ineffective assistance of counsel before and during trial).

§ 25-32-13. Appointment of counsel by court in conflict of interest cases; appointment of additional counsel where necessary.

(1) If the court finds that indigent defendants have such conflicts of interests that they all cannot be properly represented by the public defender, or when other good cause is shown in the trial court or on appeal, the court shall appoint separate counsel as provided in Section 99-15-15, Mississippi Code of 1972. In such cases, the fees allowed appointed counsel in Section 99-15-17, Mississippi Code of 1972, shall apply.

(2) If the court finds that an indigent is a defendant in a case of such a nature that he cannot be properly represented by the public defender alone, the court shall appoint additional counsel to assist the public defender as provided in Section 99-15-15, Mississippi Code of 1972. In such cases, the fees allowed appointed counsel in Section 99-15-17, Mississippi Code of 1972, shall apply.

SOURCES: Laws, 1979, ch. 509, § 7, eff from and after October 1, 1979.

Editor's Note — This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

“(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State.”

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

RESEARCH REFERENCES

ALR. Construction and effect of statutes providing for office of public defender. 36 A.L.R.3d 1403.

Right of court-appointed attorney to contract with his indigent client for fee. 43 A.L.R.3d 1426.

Indigent accused's right to choose particular counsel appointed to assist him. 66 A.L.R.3d 996.

Practice References. Young, Trial Handbook for Mississippi Lawyers § 1:2.

§ 25-32-15. Termination of office.

The office of public defender may be terminated, in the discretion of the board of supervisors, by entering an order upon the minutes of the board of supervisors six (6) months prior to the expiration of the term of the public defender. Such termination shall be effective at the end of the term of the public defender.

SOURCES: Laws, 1979, ch. 509, § 8, eff from and after October 1, 1979.

Editor's Note — This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

“(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State.”

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repeal in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

§ 25-32-17. Compensation, staff, office space, and secretarial assistance not to be reduced; authority to increase.

The compensation, administrative staff, office space and secretarial assistance shall not be reduced or diminished but may be increased during the term of the public defender.

SOURCES: Laws, 1979, ch. 509, § 9, eff from and after October 1, 1979.

Editor's Note — This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

“(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new

programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State.”

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

§ 25-32-19. Obtaining financial, professional, investigatory, research, or other assistance.

The public defender and the board of supervisors may cooperate with any individual or public agency, whether state or federal, or with any institution of higher learning of the State of Mississippi, to obtain by gift, grant or otherwise any financial, professional, investigatory or research or other assistance; provided, however, that any grants or any financial assistance whatever for the purpose herein set out shall be paid over to the board of supervisors and administered by it for the purposes herein set forth. The board shall have the authority to use any financial assistance or grants to extend and expand the facilities of the office.

SOURCES: Laws, 1979, ch. 509, § 10, eff from and after October 1, 1979.

Editor’s Note — This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

“(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State.”

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

RESEARCH REFERENCES

ALR. Construction and effect of statutes providing for office of public defender. 36 A.L.R.3d 1403.

Practice References. Young, Trial Handbook for Mississippi Lawyers § 1:2.

§ 25-32-21. Omitted.

[Laws, 1998, ch. 575, § 19, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified.]

Editor’s Note — Former § 25-32-21, as enacted by Section 19 of Chapter 575, Laws of 1998, provided for the repeal of §§ 25-32-1 through 25-32-19, effective July 1, 1999. Section 21 of that act provided, in part:

“(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State.”

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. The text of § 25-32-21 has been omitted from the Code at the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

MISSISSIPPI PUBLIC DEFENDER TASK FORCE

SEC.

25-32-71. Creation of Task Force; members; officers; adoption of rules; reimbursement of expenses; duties [Repealed effective July 1, 2014].

§ 25-32-71. Creation of Task Force; members; officers; adoption of rules; reimbursement of expenses; duties [Repealed effective July 1, 2014].

(1) There is created the Mississippi Public Defender Task Force which shall be composed of thirteen (13) members as follows:

(a) The President of the Mississippi Public Defender Association, or his designee;

(b) The President of the Mississippi Prosecutors Association, or his designee;

(c) A representative of the Administrative Office of Courts;

(d) A representative of the Mississippi Supreme Court;

(e) A representative of the Conference of Circuit Judges;

(f) A representative of the Mississippi Attorney General’s Office;

(g) A representative of the Mississippi Association of Supervisors;

(h) A representative of The Mississippi Bar;

(i) A representative of the Magnolia Bar Association;

(j) The Chairman of the Senate Judiciary Committee, Division B, or his designee;

(k) The Chairman of the Senate Appropriations Committee, or his designee;

(l) The Chairman of the House Judiciary En Banc Committee, or his designee;

(m) The Chairman of the House Appropriations Committee, or his designee.

(2) At its first meeting, the task force shall elect a chairman and vice chairman from its membership and shall adopt rules for transacting its

business and keeping records. Members of the task force shall receive a per diem in the amount provided in Section 25-3-69 for each day engaged in the business of the task force. Members of the task force other than the legislative members shall receive reimbursement for travel expenses incurred while engaged in official business of the task force in accordance with Section 25-3-41 and the legislative members of the task force shall receive the expense allowance provided for in Section 5-1-47.

(3) The duties of the task force shall be to:

(a) Make a comprehensive study of the needs by circuit court districts for state-supported indigent defense counsel to examine existing public defender programs, including indigent defense provided in the youth courts. Reports shall be provided to the Legislature each year at least one (1) month before the convening of the regular session.

(b) Examine and study approaches taken by other states in the implementation and costs of state-supported indigent criminal and delinquency cases.

(c) To study the relationship between presiding circuit and youth court judges and the appointment of criminal and delinquency indigent defense counsel.

(4) This section shall stand repealed on July 1, 2014.

SOURCES: Laws, 2000, ch. 569, § 30; Laws, 2001, ch. 373, § 1; Laws, 2003, ch. 321, § 1; Laws, 2007, ch. 547, § 1; Laws, 2007, ch. 559, § 1; Laws, 2011, ch. 312, § 1, eff from and after passage (approved Feb. 24, 2011.)

Amendment Notes — The 2011 amendment extended the repealer provision from “July 1, 2011” to “July 1, 2014” in (4).

CHAPTER 41

Open Meetings

SEC.	
25-41-3.	Definitions.
25-41-5.	Official meetings of public bodies to be public and open; provisions for teleconference and video meetings.
25-41-13.	Notice of meetings.
25-41-15.	Enforcement.

§ 25-41-1. Legislative declaration.

ATTORNEY GENERAL OPINIONS

A school board may employ legal counsel other than the Board Attorney only by a majority vote of a quorum present in a properly noticed and open meeting of the board, and must officially hire an attorney before sharing any confidential personnel records. Reasons for non-renewal of a su-

perintendent's contract and any settlement offers must be approved and recorded in the minutes at an official meeting of the board. All policies, actions, and decisions of the school board must be reasonable and necessary to meet the educational needs of the district's children.

Foreman, March 30, 2007, A.G. Op. #07-00119, 2007 Miss. AG LEXIS 71.

§ 25-41-3. Definitions.

For purposes of this chapter, the following words shall have the meaning ascribed herein, to wit:

(a) “Public body” means any executive or administrative board, commission, authority, council, department, agency, bureau or any other policy-making entity, or committee thereof, of the State of Mississippi, or any political subdivision or municipal corporation of the state, whether such entity be created by statute or executive order, which is supported wholly or in part by public funds or expends public funds, and any standing, interim or special committee of the Mississippi Legislature. The term “public body” includes the governing board of a charter school authorized by the Mississippi Charter School Authorizer Board. There shall be exempted from the provisions of this chapter:

- (i) The judiciary, including all jury deliberations;
- (ii) Public and private hospital staffs, public and private hospital boards and committees thereof;
- (iii) Law enforcement officials;
- (iv) The military;
- (v) The State Probation and Parole Board;
- (vi) The Workers’ Compensation Commission;
- (vii) Legislative subcommittees and legislative conference committees;
- (viii) The arbitration council established in Section 69-3-19;
- (ix) License revocation, suspension and disciplinary proceedings held by the Mississippi State Board of Dental Examiners; and
- (x) Hearings and meetings of the Board of Tax Appeals and of the hearing officers and the board of review of the Department of Revenue as provided in Section 27-77-15.

(b) “Meeting” means an assemblage of members of a public body at which official acts may be taken upon a matter over which the public body has supervision, control, jurisdiction or advisory power; “meeting” also means any such assemblage through the use of video or teleconference devices.

SOURCES: Laws, 1975, ch. 481, § 2; Laws, 1991, ch. 483, § 34; Laws, 2000, ch. 623, § 9; Laws, 2003, ch. 496, § 1; Laws, 2005, ch. 499, § 11; Laws, 2009, ch. 492, § 8; Laws, 2013, ch. 497, § 33, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment added the next-to-last sentence in (a).

Cross References — Mississippi Charter School Authorizer Board, generally, see §§ 37-179-1 et seq.

§ 25-41-5. Official meetings of public bodies to be public and open; provisions for teleconference and video meetings.

(1) All official meetings of any public body, unless otherwise provided in this chapter or in the Constitutions of the United States of America or the State of Mississippi, are declared to be public meetings and shall be open to the public at all times unless declared an executive session as provided in Section 25-41-7.

(2)(a) A public body may conduct any meeting through teleconference or video means. A quorum of a public body as prescribed by law may be at different locations for the purpose of conducting a meeting through teleconference or video means provided participation is available to the general public at one or more public locations specified in the public meeting notice.

(b) A municipal public body may establish a quorum with the members of such public body who are on active duty in any branch of the United States Armed Forces by using any teleconference or video device that allows such members of the municipal public body to clearly communicate with each other and clearly view each other for the purpose of conducting a meeting, voting on issues of the municipal public body and transacting business of the municipal public body provided that such participation is available to the general public at one or more public locations specified in the public meeting notice.

(3)(a) Notice of any meetings held pursuant to subsection (2) of this section shall be provided at least five (5) days in advance of the date scheduled for the meeting. The notice shall include the date, time, place and purpose for the meeting and shall identify all locations for the meeting available to the general public. All persons attending the meeting at any of the public meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location. Any interruption in the teleconference or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

(b) Five-day notice shall not be required for teleconference or video meetings continued to address an emergency as provided in subsection (5) of this section or to conclude the agenda of a teleconference or video meeting of the public body for which the proper notice has been given, when the date, time, place and purpose of the continued meeting are set during the meeting prior to adjournment.

(4) An agenda and materials that will be distributed to members of the public body and that have been made available to the staff of the public body in sufficient time for duplication and forwarding to all locations where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by teleconference or video means shall be recorded as required by Section 25-41-11. Votes taken during any meeting conducted through teleconference or video means shall be recorded by name in roll-call fashion and included in the minutes. In addition, the public body shall

make an audio recording of the meeting, if a teleconference medium is used, or an audio/visual recording, if the meeting is held by video means. The recording shall be preserved by the public body for a period of three (3) years following the date of the meeting and shall be available to the public.

(5) A public body may meet by teleconference or video means as often as needed if an emergency exists and the public body is unable to meet in regular session. Public bodies conducting emergency meetings through teleconference or video means shall comply with the provisions of subsection (4) of this section requiring minutes, recordation and preservation of the audio or audio/visual recording of the meeting. The nature of the emergency shall be stated in the minutes.

SOURCES: Laws, 1975, ch. 481, § 3; Laws, 2003, ch. 496, § 2; Laws, 2006, ch. 596, § 2; Laws, 2007, ch. 591, § 1; Laws, 2009, ch. 405, § 1; Laws, 2012, ch. 442, § 1, eff September 20, 2012 (the date the United States Attorney General determined the amendments to this section were not subject to Section 5 of the Voting Rights Act of 1965.)

Editor's Note — Laws of 2012, ch. 442, §§ 7 and 8 provide:

“SECTION 7. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

“SECTION 8. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.”

By letter dated September 20, 2012, the United States Attorney General determined that the amendments to this section by Chapter 442, Laws of 2012, were not subject to preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Amendment Notes — The 2012 amendment added (2)(b).

§ 25-41-9. Regulatory authority for governing; conduct of persons attending meetings.

ATTORNEY GENERAL OPINIONS

Under the Mississippi Open Meetings Act, Miss. Code Ann. § 25-41-1 et seq., a municipality's Board of Aldermen may develop rules concerning the video or audio recording of its meetings to allow for mini-

mal disruption thereof, but may not limit or restrict such recordings based upon the person's purpose in making the recording. Carnathan, February 9, 2007, A.G. Op. #07-00021, 2007 Miss. AG LEXIS 17.

§ 25-41-13. Notice of meetings.

(1) Any public body which holds its meetings at such times and places and by such procedures as are specifically prescribed by statute shall continue to do so and no additional notice of such meetings shall be required except that a notice of the place, date, hour and subject matter of any recess meeting, adjourned meeting, interim meeting or any called special meeting shall be posted within one (1) hour after such meeting is called in a prominent place

available to examination and inspection by the general public in the building in which the public body normally meets. A copy of the notice shall be made a part of the minutes or other permanent official records of the public body.

(2) Any public body, other than a legislative committee, which does not have statutory provisions prescribing the times and places and the procedures by which its meetings are to be held shall, at its first regular or special meeting after the effective date of this chapter spread upon its minutes the times and places and the procedures by which all of its meetings are to be held.

(3) Notice of any regular meeting held by a state agency, other than a legislative committee, shall be submitted to the Department of Finance and Administration at least twenty-four (24) hours before the meeting in order to be posted on the department's searchable website created by the Mississippi Accountability and Transparency Act, Section 27-104-152 et seq. For purposes of this subsection, the term "state agency" means an agency, department, institution, board, commission, council, office, bureau, division, committee or subcommittee of the state. However, the term "state agency" does not include institutions of higher learning, community and junior colleges, counties or municipalities.

(4) During a regular or special session of the Mississippi Legislature, notice of meetings of all committees, other than conference committees, shall be given by announcement on the loudspeaker during sessions of the House of Representatives or Senate or by posting on a bulletin board provided for that purpose by each body.

(5) When not in session, the meeting times and places of all committees shall be kept by the Clerk of the House of Representatives as to House committees and by the Secretary of the Senate as to Senate committees, and shall be available at all times during regular working hours to the public and news media.

SOURCES: Laws, 1975, ch. 481, § 7; Laws, 1990, ch. 541, § 2; Laws, 2013, ch. 388, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment added (3), and redesignated former (3) and (4) as (4) and (5).

§ 25-41-15. Enforcement.

The Mississippi Ethics Commission shall have the authority to enforce the provisions of this chapter upon a complaint filed by any person. Upon receiving a complaint, the commission shall forward a copy of the complaint to the head of the public body involved. The public body shall have fourteen (14) days from receipt of the complaint to file a response with the commission. After receiving the response to the complaint or, if no response is received after fourteen (14) days, the commission, in its discretion, may dismiss the complaint or proceed by setting a hearing in accordance with rules and regulations promulgated by the Ethics Commission.

After a hearing, the Ethics Commission may order the public body to take whatever reasonable measures necessary, if any, to comply with this chapter.

If the Ethics Commission finds that a member or members of a public body has willfully and knowingly violated the provisions of this chapter, the Ethics Commission may impose a civil penalty upon the individual members of the public body found to be in violation of the provision of this chapter in a sum not to exceed Five Hundred Dollars (\$500.00) for a first offense and One Thousand Dollars (\$1,000.00) for a second or subsequent offense, plus all reasonable expenses incurred by the person or persons in bringing the complaint to enforce this chapter.

Nothing in this chapter shall be construed to prohibit the Ethics Commission from mediating or otherwise resolving disputes arising under this chapter or from entering orders agreed to by the parties. In carrying out its responsibilities under this section, the Ethics Commission shall have all the powers and authority granted to it in Title 25, Chapter 4, Mississippi Code of 1972.

Any party may petition the chancery court of the county in which the public body is located to enforce or appeal any order of the Ethics Commission issued pursuant to this chapter. In any such appeal the chancery court shall conduct a de novo review.

SOURCES: Laws, 1975, ch. 481, § 8; Laws, 2003, ch. 495, § 1; Laws, 2008, ch. 562, § 17, eff August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2011, ch. 310, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment in the second sentence of the second paragraph, inserted “member or members of a,” “individual members of the,” and “found to be in violation of the provision of this chapter” and substituted “Five Hundred Dollars (\$500.00) for a first offense and One Thousand Dollars (\$1,000.00) for a second or subsequent offense” for “One Hundred Dollars (\$100.00).”

CHAPTER 43

Administrative Procedures

Article 3.	Rule-Making Adoption and Effectiveness of Rules	25-43-3.101
Article 4.	Mississippi Small Business Regulatory Flexibility Act ..	25-43-4.101

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the running heads of Sections 25-43-1 through 25-43-19 in the main volume. The word “Administrativ” was changed to “Administrative”. The Joint Committee ratified the correction at its July 8, 2004 meeting.

ARTICLE 1.

GENERAL PROVISIONS.

§ 25-43-1.102. Definitions.

JUDICIAL DECISIONS

1. Regulation or statement.

Mississippi Department of Corrections (MDOC) execution protocol is a “regulation or statement” related only to inmates of the MDOC and is therefore exempt from the provisions of the Mississippi Administrative Procedures Law (MAPL); the protocol is an internal policy concerning lethal injections and the manner in which executions are carried out and is therefore not subject to the notice and comment requirements of the MAPL. *Mississippians Educating for Smart Justice, Inc. v. Miss. Dep’t of Corr.*, 98 So. 3d 459 (Miss. 2012).

Execution protocol of the Mississippi Department of Corrections (MDOC) was

exempt from the provisions of the Mississippi Administrative Procedures Law (MAPL) under Miss. Code Ann. § 25-53-102(i)(ii)(6) because it was a “regulation or statement” related only to inmates of the MDOC at a specific facility and did not affect any provision of Miss. Code Ann. § 99-19-55 or alter Miss. Code Ann. § 99-19-51; the protocol was not subject to the notice and comment requirements of the MAPL because it was an internal policy concerning lethal injections and the manner in which executions were carried out. *Mississippians Educating for Smart Justice, Inc. v. Miss. Dep’t of Corr.*, 98 So. 3d 459 (Miss. 2012).

ARTICLE 3.

RULE-MAKING ADOPTION AND EFFECTIVENESS OF RULES.

SEC.

25-43-3.105. Economic impact statement, requirement and conditions.

§ 25-43-3.105. Economic impact statement, requirement and conditions.

[Through June 30, 2016, this section shall read as follows:]

(1) Prior to giving the notice required in Section 25-43-3.103, each agency proposing the adoption of a rule or amendment of an existing rule imposing a duty, responsibility or requirement on any person shall consider the economic impact the rule will have on the citizens of our state and the benefits the rule will cause to accrue to those citizens.

(2) Each agency shall prepare a written report providing an economic impact statement for the adoption of a rule or amendment to an existing rule imposing a duty, responsibility or requirement on any person. The economic impact statement shall include the following:

(a) The specific legal authority authorizing the promulgation of the rule.

(b) A description of:

- (i) The need for the proposed action;
- (ii) The benefits which will likely accrue as the result of the proposed action; and
- (iii) The effect the proposed action will have on the public health, safety and welfare.

(c) An estimate of the cost to the agency, and to any other state or local government entities, of implementing and enforcing the proposed action, including the estimated amount of paperwork, and any anticipated effect on state or local revenues;

(d) An estimate of the cost or economic benefit to all persons directly affected by the proposed action;

(e) An analysis of the impact of the proposed rule on small business;

(f) A comparison of the costs and benefits of the proposed rule to the probable costs and benefits of not adopting the proposed rule or significantly amending an existing rule;

(g) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule where reasonable alternative methods exist which are not precluded by law;

(h) A description of reasonable alternative methods, where applicable, for achieving the purpose of the proposed action which were considered by the agency and a statement of reasons for rejecting those alternatives in favor of the proposed rule; and

(i) A detailed statement of the data and methodology used in making estimates required by this subsection.

(3) No rule or regulation shall be declared invalid based on a challenge to the economic impact statement for the rule unless the issue is raised in the agency proceeding. No person shall have standing to challenge a rule, based upon the economic impact statement or lack thereof, unless that person provided the agency with information sufficient to make the agency aware of specific concerns regarding the statement in an oral proceeding or in written comments regarding the rule. The grounds for invalidation of an agency action, based upon the economic impact statement, are limited to the agency's failure to adhere to the procedure for preparation of the economic impact statement as provided in this section, or the agency's failure to consider information submitted to the agency regarding specific concerns about the statement, if that failure substantially impairs the fairness of the rule-making proceeding.

(4) A concise summary and the full text of the economic impact statement must be properly filed with the Secretary of State for publication in the administrative bulletin and the period during which persons may make written submissions on the proposed rule shall not expire until at least twenty (20) days after the date of such proper filing.

(5) The properly filed summary of the economic impact statement must also indicate where, when and how persons may present their views on the proposed rule and demand an oral proceeding on the proposed rule if one is not already provided.

[From and after July 1, 2016, this section shall read as follows:]

(1) Prior to giving the notice required in Section 25-43-3.103, each agency proposing the adoption of a rule or significant amendment of an existing rule imposing a duty, responsibility or requirement on any person shall consider the economic impact the rule will have on the citizens of our state and the benefits the rule will cause to accrue to those citizens. For purposes of this section, a “significant amendment” means any amendment to a rule for which the total aggregate cost to all persons required to comply with that rule exceeds One Hundred Thousand Dollars (\$100,000.00).

(2) Each agency shall prepare a written report providing an economic impact statement for the adoption of a rule or significant amendment to an existing rule imposing a duty, responsibility or requirement on any person, except as provided in subsection (7) of this section. The economic impact statement shall include the following:

(a) A description of the need for and the benefits which will likely accrue as the result of the proposed action;

(b) An estimate of the cost to the agency, and to any other state or local government entities, of implementing and enforcing the proposed action, including the estimated amount of paperwork, and any anticipated effect on state or local revenues;

(c) An estimate of the cost or economic benefit to all persons directly affected by the proposed action;

(d) An analysis of the impact of the proposed rule on small business;

(e) A comparison of the costs and benefits of the proposed rule to the probable costs and benefits of not adopting the proposed rule or significantly amending an existing rule;

(f) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule where reasonable alternative methods exist which are not precluded by law;

(g) A description of reasonable alternative methods, where applicable, for achieving the purpose of the proposed action which were considered by the agency and a statement of reasons for rejecting those alternatives in favor of the proposed rule; and

(h) A detailed statement of the data and methodology used in making estimates required by this subsection.

(3) No rule or regulation shall be declared invalid based on a challenge to the economic impact statement for the rule unless the issue is raised in the agency proceeding. No person shall have standing to challenge a rule, based upon the economic impact statement or lack thereof, unless that person provided the agency with information sufficient to make the agency aware of specific concerns regarding the statement in an oral proceeding or in written comments regarding the rule. The grounds for invalidation of an agency action, based upon the economic impact statement, are limited to the agency’s failure to adhere to the procedure for preparation of the economic impact statement as provided in this section, or the agency’s failure to consider information submitted to the agency regarding specific concerns

about the statement, if that failure substantially impairs the fairness of the rule-making proceeding.

(4) A concise summary of the economic impact statement must be properly filed with the Secretary of State for publication in the administrative bulletin and the period during which persons may make written submissions on the proposed rule shall not expire until at least twenty (20) days after the date of such proper filing.

(5) The properly filed summary of the economic impact statement must also indicate where persons may obtain copies of the full text of the economic impact statement and where, when and how persons may present their views on the proposed rule and demand an oral proceeding on the proposed rule if one is not already provided.

(6) If the agency has made a good-faith effort to comply with the requirements of subsections (1) and (2) of this section, the rule may not be invalidated on the ground that the contents of the economic impact statement are insufficient or inaccurate.

(7) This section does not apply to the adoption of:

(a) Any rule which is required by the federal government pursuant to a state/federal program delegation agreement or contract;

(b) Any rule which is expressly required by state law; and

(c) A temporary rule adopted pursuant to Section 25-43-3.108.

SOURCES: Laws, 2003, ch. 304, § 16; Laws, 2012, ch. 454, § 10, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment provided for two versions of the section, in the first version, effective through June 30, 2016, in (1), deleted “significant” preceding “amendment of an existing rule”, and deleted the former last sentence which read: “For purposes of this section, a ‘significant amendment’ means any amendment to a rule for which the total aggregate cost to all persons required to comply with that rule exceeds One Hundred Thousand Dollars (\$100,000.00)”; rewrote (2); inserted “and the full text” following “A concise summary” in (4); rewrote (5); and deleted former (6) and (7).

§ 25-43-3.111. Invalidity of rules not adopted according to article; time limitation.

JUDICIAL DECISIONS

1. Exemption.

Mississippi Department of Corrections (MDOC) execution protocol is a “regulation or statement” related only to inmates of the MDOC and is therefore exempt from the provisions of the Mississippi Administrative Procedures Law (MAPL); the protocol is an internal policy concerning lethal injections and the manner in which executions are carried out and is therefore not subject to the notice and comment

requirements of the MAPL. *Mississippians Educating for Smart Justice, Inc. v. Miss. Dep’t of Corr.*, 98 So. 3d 459 (Miss. 2012).

Execution protocol of the Mississippi Department of Corrections (MDOC) was exempt from the provisions of the Mississippi Administrative Procedures Law (MAPL) under Miss. Code Ann. § 25-53-102(i)(ii)(6) because it was a “regulation or statement” related only to inmates of the

MDOC at a specific facility and did not affect any provision of Miss. Code Ann. § 99-19-55 or alter Miss. Code Ann. § 99-19-51; the protocol was not subject to the notice and comment requirements of the MAPL because it was an internal policy

concerning lethal injections and the manner in which executions were carried out. *Mississippians Educating for Smart Justice, Inc. v. Miss. Dep't of Corr.*, 98 So. 3d 459 (Miss. 2012).

ARTICLE 4.

MISSISSIPPI SMALL BUSINESS REGULATORY FLEXIBILITY ACT.

- SEC.
- 25-43-4.101. Short title [Repealed effective July 1, 2016].
 - 25-43-4.102. Definitions [Repealed effective July 1, 2016].
 - 25-43-4.103. Small Business Regulatory Review Committee; duties, relation to Mississippi Development Authority, composition, terms, meetings, quorum [Repealed effective July 1, 2016].
 - 25-43-4.104. Economic impact upon small business statement requirement and conditions; review and comment by committee; periodic review of final rule [Repealed effective July 1, 2016].
 - 25-43-4.105. Committee opposition to promulgated regulations; agency response [Repealed effective July 1, 2016].
 - 25-43-4.106. Annual report [Repealed effective July 1, 2016].
 - 25-43-4.107. Waiver of or reduction in administrative penalty or fine under certain circumstances [Repeal effective July 1, 2016].
 - 25-43-4.108. Applicability and relation to other laws [Repealed effective July 1, 2016].
 - 25-43-4.109. Repeal of Sections 25-43-4.101 through 25-43-4.109 [Repealed effective July 1, 2016].

§ 25-43-4.101. Short title [Repealed effective July 1, 2016].

This article may be cited as the “Mississippi Small Business Regulatory Flexibility Act.”

SOURCES: Laws, 2012, ch. 454, § 1, eff from and after July 1, 2012.

Editor’s Note — For repeal of this section, see § 25-43-4.109.

§ 25-43-4.102. Definitions [Repealed effective July 1, 2016].

As used in this article:

- (a) “Agency” is defined in Section 25-43-1.102.
- (b) “Department” means the Mississippi Development Authority.
- (c) “Committee” means the Small Business Regulatory Review Committee.
- (d) “Rule” is defined in Section 25-43-1.102, except that the term “rule” shall not include emergency or preemptive rules.
- (e) “Small business” means a for-profit business entity employing fewer than one hundred (100) full-time employees or having gross annual sales or revenues of less than Ten Million Dollars (\$10,000,000.00).

SOURCES: Laws, 2012, ch. 454, § 2, eff from and after July 1, 2012.

Editor's Note — For repeal of this section, see § 25-43-4.109.

§ 25-43-4.103. Small Business Regulatory Review Committee; duties, relation to Mississippi Development Authority, composition, terms, meetings, quorum [Repealed effective July 1, 2016].

(1) There is established a Small Business Regulatory Review Committee.

(2) The duties of the committee shall be to:

(a) Provide agencies with input regarding proposed permanent rules which may have an economic impact upon small business and for which a notice of intended action is published by the Secretary of State on or after July 1, 2012;

(b) Review any rule promulgated by a state agency for which notice has been given by the agency to the committee that the proposed rule has or may have an economic effect upon small business and make recommendations to the agency and or the Legislature regarding the need for a rule or legislation;

(c) Petition an agency to amend, revise, or revoke an existing regulation based on an economic impact on small business; and

(d) Advise and assist agencies in complying with the provisions of and perform any and all acts and duties set forth and authorized in the Mississippi Small Business Regulatory Flexibility Act.

(3) The committee is assigned to the Mississippi Development Authority for administrative purposes only. The department shall act as a coordinator for the committee, and shall not be required to provide legal counsel for the committee.

(4) The committee shall consist of twelve (12) members, appointed as follows:

(a) Four (4) members to be appointed by the Governor;

(b) Four (4) members to be appointed by the Lieutenant Governor; and

(c) Four (4) members to be appointed by the Speaker of the House of Representatives.

(5) The appointing authorities shall appoint members of the committee from:

(a) Lists of nominees submitted by the following business organizations:

(i) National Federation of Independent Business;

(ii) Mississippi Manufacturers Association;

(iii) Mississippi Retail Association;

(iv) Mississippi Petroleum Marketers and Convenience Stores Association;

(v) Mississippi Minority Contractors Association;

(vi) Mississippi Economic Council;

(vii) Mississippi Farm Bureau Federation; and

(viii) Any local chamber of commerce; and/or

(b) Small business owners or operators not affiliated with the business organizations listed in paragraph (a) of this subsection.

(6) Appointments to the committee shall be representative of a variety of small businesses in this state. All appointed members shall be either current or former owners or officers of a small business.

(7) The initial appointments to the committee shall be made within sixty (60) days from July 1, 2012. The Mississippi Development Authority shall provide the name and address of each appointee to the Governor, Lieutenant Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Secretary of State.

(8)(a) Members initially appointed to the committee shall serve for terms ending December 31, 2014. Thereafter, appointed members shall serve two-year terms that expire on December 31 of the second year.

(b) The Governor shall appoint the initial chair of the committee from the appointed members for a term ending December 31, 2014. Subsequent chairs of the committee shall be elected by the committee from the appointed members for two-year terms that expire on December 31 of the second year.

(9) Members of the committee shall not receive any compensation.

(10) The committee shall meet as determined by the chair of the committee.

(11) A majority of the voting members of the committee shall constitute a quorum to do business. The concurrence of a majority of the members of the committee present and voting shall be necessary to make any action of the committee valid.

(12) No appointed committee member shall serve more than three (3) consecutive terms.

SOURCES: Laws, 2012, ch. 454, § 3, eff from and after July 1, 2012.

Editor's Note — For repeal of this section, see § 25-43-4.109.

**§ 25-43-4.104. Economic impact upon small business state-
ment requirement and conditions; review and comment by
committee; periodic review of final rule [Repealed effective
July 1, 2016].**

(1) Prior to submitting proposed permanent rules for adoption, amendment, revision or revocation pursuant to the Mississippi Administrative Procedures Law, the agency shall comply with Section 25-43-3.105(2)(e) in order to determine whether the proposed rules affect small business by preparing an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the proposed regulation;

(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;

(c) A statement of the probable effect on impacted small businesses;
(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, including the following regulatory flexibility analysis:

(i) The establishment of less stringent compliance or reporting requirements for small businesses;

(ii) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(iii) The consolidation or simplification of compliance or reporting requirements for small businesses;

(iv) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

(v) The exemption of some or all small businesses from all or any part of the requirements contained in the proposed regulations.

(2) If the economic impact statement reflects that a proposed rule may have an economic effect upon small business, the agency shall submit a copy of the proposed rules and the economic impact statement to the committee for its review and comment pursuant to the review and comment provisions of the Mississippi Administrative Procedures Law. During the committee review process, the director or the director's designee of the promulgating agency shall be available at the request of the committee for comment on the proposed regulation.

(3) Within the review and comment period, if the committee determines that the proposed rules may have an economic effect upon small business, the committee may submit to the agency its comments concerning the proposed regulation including its specific recommendations.

(4) A small business that is affected or aggrieved by final agency action to enforce a rule or regulation is entitled to review of agency compliance with the requirements of this act.

(5) To ensure that any final rule continues to minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes, each agency shall, during any periodic review required by this chapter, consider the following factors:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates, or conflicts with other federal, state and local governmental law or rules; and

(e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

SOURCES: Laws, 2012, ch. 454, § 4, eff from and after July 1, 2012.

Editor's Note — For repeal of this section, see § 25-43-4.109.

Cross References — Mississippi Administrative Procedures Law, see §§ 25-43-1.101 et seq.

§ 25-43-4.105. Committee opposition to promulgated regulations; agency response [Repealed effective July 1, 2016].

(1) For promulgated regulations, the committee may file a written petition with the agency that has promulgated the regulations opposing all or part of a regulation that has an impact on small business. In addition to distinctly setting forth how the regulation has had an impact on small business, the committee's petition shall address the following factors:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other federal, state and local governmental laws or rules; and

(e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the rule.

The petition may also renew any earlier comments made by the committee when the regulation was first promulgated, as provided by Section 25-43-4.104(3). Furthermore, the committee's petition shall make a specific recommendation concerning the regulation, including, but not limited to, whether the regulation should be amended, revised or revoked.

(2) The agency shall submit a written response of its determination to the committee within sixty (60) days after receipt of the petition. If the agency determines that the petition merits the amendment, revision, or revocation of a regulation, the agency may initiate proceedings in accordance with the applicable requirements of the Mississippi Administrative Procedures Law. If the agency determines that the petition is without merit, the committee may submit within thirty (30) days additional data in support of its petition.

SOURCES: Laws, 2012, ch. 454, § 5, eff from and after July 1, 2012.

Editor's Note — For repeal of this section, see § 25-43-4.109.

Cross References — Mississippi Administrative Procedures Law, see §§ 25-43-1.101 et seq.

§ 25-43-4.106. Annual report [Repealed effective July 1, 2016].

The committee shall make an annual report by January 15 of each year to the Governor, the Lieutenant Governor and the Speaker of the House of Representatives and provide detailed information on the committee's activities during the previous calendar year.

SOURCES: Laws, 2012, ch. 454, § 6, eff from and after July 1, 2012.

Editor's Note — For repeal of this section, see § 25-43-4.109.

§ 25-43-4.107. Waiver of or reduction in administrative penalty or fine under certain circumstances [Repeal effective July 1, 2016].

(1) Notwithstanding any other law of this state, any agency authorized to assess administrative penalties or administrative fines upon a business may waive or reduce any administrative penalty or administrative fine for a violation of any statute, ordinance, or rules by a small business under the following conditions:

(a) The small business corrects the violation within thirty (30) days or less after receipt of a notice of violation or citation;

(b) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule; or

(c) The agency determines that the small business is making a good-faith effort to comply with the statute, ordinance or rule.

(2) Subsection (1) of this section shall not apply when:

(a) A small business fails to exercise good faith in complying with the statute, ordinance or rule;

(b) A violation involves criminal conduct;

(c) A violation results in serious health, safety or environmental impact; or

(d) The penalty or fine is assessed pursuant to a federal law or regulation and for which no waiver or reduction is authorized by the federal law or regulation.

SOURCES: Laws, 2012, ch. 454, § 7, eff from and after July 1, 2012.

Editor's Note — For repeal of this section, see § 25-43-4.109.

§ 25-43-4.108. Applicability and relation to other laws [Repealed effective July 1, 2016].

The Mississippi Small Business Regulatory Flexibility Act shall not apply to proposed permanent rules by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as state legislative or federally mandated provisions which afford the agency no discretion to consider less restrictive alternatives.

SOURCES: Laws, 2012, ch. 454, § 8, eff from and after July 1, 2012.

Editor's Note — For repeal of this section, see § 25-43-4.109.

§ 25-43-4.109. Repeal of Sections 25-43-4.101 through 25-43-4.109 [Repealed effective July 1, 2016].

Sections 25-43-4.101 through 25-43-4.109 shall be repealed from and after July 1, 2016.

SOURCES: Laws, 2012, ch. 454, § 9, eff from and after July 1, 2012.

CHAPTER 51

State Depository for Public Documents

- SEC.
- | | |
|----------|---|
| 25-51-1. | Designation of Mississippi Library Commission as state depository for public records; electronic form of publications as public record. |
| 25-51-3. | Agencies to furnish documents in electronic form for publication on commission website. |
| 25-51-5. | Annual lists of public documents. |
| 25-51-7. | Recorder of public documents. |

§ 25-51-1. Designation of Mississippi Library Commission as state depository for public records; electronic form of publications as public record.

The Mississippi Library Commission, hereinafter referred to as the “commission,” shall be the state depository for the public records issued by any government agency for public distribution, including the annual report required under Section 27-101-1. Each agency publication shall be made available in an electronic form, and the electronic form shall constitute the public record. The record shall be placed on the official website of the commission. The libraries of state agencies, public junior colleges, colleges, public universities and public libraries located in the state may also become depositories of state agency publications that are available on the commission’s official website, when designated as such by the director of the commission upon the written request of the applicable government agency.

SOURCES: Codes, 1942, § 4228-21; Laws, 1966, ch. 555, § 1; Laws, 1975, ch. 347, § 1; Laws, 2012, ch. 429, § 4, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote the section.

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

§ 25-51-3. Agencies to furnish documents in electronic form for publication on commission website.

Each agency of state government shall furnish to the director of the commission the necessary information to provide its publications and public records in an electronic form for placement on the official website of the

commission. The director of the commission shall transmit this information to each depository. These records shall be made accessible by the depository receiving them to any person desiring to examine the same.

SOURCES: Codes, 1942, § 4228-22; Laws, 1966, ch. 555, § 2; Laws, 1975, ch. 347, § 2; Laws, 2012, ch. 429, § 5, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote the section.
Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

§ 25-51-5. Annual lists of public documents.

Each agency of state government shall furnish annually to the director of the commission a list of all its publications made available for public distribution.

SOURCES: Codes, 1942, § 4228-23; Laws, 1966, ch. 555, § 3; Laws, 1975, ch. 347, § 3; Laws, 2012, ch. 429, § 6, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote the section, which read “Each agency of state government shall furnish to the director of the Mississippi Library Commission semiannually a list of all its publications issued for public distribution, and the director of the Mississippi Library Commission shall make and furnish to each depository a duplicate copy of the same.”

§ 25-51-7. Recorder of public documents.

A recorder of documents shall be appointed by the director of the commission in his office, whose functions shall be to administer the provisions of Sections 25-51-1 through 25-51-5, under the supervision of the director of the commission.

SOURCES: Codes, 1942, § 4228-24; Laws, 1966, ch. 555, § 4; Laws, 1975, ch. 347, § 4; Laws, 2012, ch. 429, § 7, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment deleted “Mississippi Library” preceding “commission in his office” at the beginning of the section and following “director of the” at the end; and substituted “Sections 25-51-1 through 25-51-5” for “this chapter” following “administer the provisions.”

CHAPTER 53

Mississippi Department of Information Technology Services
(MDITS)

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GENERAL PROVISIONS

SEC.	
25-53-1.	Establishment of department; declaration of purposes.
25-53-3.	Definitions.
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25-53-7.	Members of authority; terms; vacancies; surety bond; restriction on beneficial interest in business or body engaged in information business; legislative designees authorized to attend meetings.
25-53-25.	Exemptions; delegation of bidding and contracting responsibilities to purchasing agency; relation to Public Purchases Law.
25-53-29.	Powers and responsibilities of authority.

§ 25-53-1. Establishment of department; declaration of purposes.

The Legislature hereby recognizes that in order for the State of Mississippi to receive the maximum use and benefit from information technology and services now in operation or which will in the future be placed in operation, there should be full cooperation and cohesive planning and effort by and between the several state agencies and that it is the responsibility of the said Legislature to provide statutory authority therefor. The Legislature, therefore, declares and determines that for these and other related purposes there is hereby established an agency of state government to be known as the Mississippi Department of Information Technology Services (MDITS). The Legislature further declares that the Mississippi Department of Information Technology Services (MDITS) shall provide statewide services that facilitate cost-effective information processing and telecommunication solutions. State agencies shall work in full cooperation with the board of MDITS to identify opportunities to minimize duplication, reduce costs and improve the efficiency of providing common technology services across agency boundaries.

SOURCES: Codes, 1942, § 8946-61; Laws, 1968, ch. 499, § 1; Laws, 1970, ch. 466, § 1; Laws, 1995, ch. 622, § 1; Laws, 2012, ch. 498, § 1, *eff from and after July 1, 2012.*

Amendment Notes — The 2012 amendment added the last two sentences.

§ 25-53-3. Definitions.

(1) Whenever the term “Central Data Processing Authority” or the term “authority,” when referring to the Central Data Processing Authority, is used in any law, rule, regulation, document or elsewhere, it shall be construed to mean the Mississippi Department of Information Technology Services.

(2) For the purposes of this chapter the following terms shall have the meanings ascribed in this section unless the context otherwise requires:

(a) “Central Data Processing Authority” and “CDPA” mean “Mississippi Department of Information Technology Services (MDITS)” and the term “authority” means “board of the MDITS.”

(b) “Bureau of Systems Policy and Planning,” “Bureau of Telecommunications,” “Bureau of Central Data Processing” and “bureau” mean “Mississippi Department of Information Technology Services.”

(c) “Computer equipment or services” means any information technology, computer or computer related telecommunications equipment, electronic word processing and office systems, or services utilized in connection therewith, including, but not limited to, all phases of computer software and consulting services, and insurance on all state-owned computer equipment.

(d) “Acquisition” of computer or telecommunications equipment or services means the purchase, lease, rental, or acquisition in any other manner of any such computer or telecommunications equipment or services.

(e) “Agency” means and includes all the various state agencies, officers, departments, boards, commissions, offices and institutions of the state.

(f) “Governing authority” means boards of supervisors, governing boards of all school districts, all boards of directors of public water supply districts, boards of directors of master public water supply districts, municipal public utility commissions, governing authorities of all municipalities, port authorities, commissioners and boards of trustees of any public hospitals and any political subdivision of the state supported wholly or in part by public funds of the state or political subdivisions thereof.

(g) “Bid” means any of the valid source selection techniques and competitive procurement methods appropriate to information technology procurement in the public sector, including, but not limited to, competitive sealed bidding, competitive sealed proposals, simplified small purchase procedures, sole source procurements, and emergency procurements.

(h) “Telecommunications transmission facility” means any transmission medium, switch, instrument, inside wiring system or other facility which is used, in whole or part, to provide any transmission.

(i) “Equipment support contract” means a contract which covers a single, specific class or classes of telecommunications equipment or service and all features associated with that class, through which state agencies may purchase or lease the item of equipment or service specified by issuing a purchase order under the terms of the contract without the necessity of further competitive bidding.

(j) “Inside wiring system” means any wiring which:

(i) Directly or indirectly, interconnects any terminal equipment with any other terminal equipment or with any regulated facility or common carrier services; and

(ii) Is located at the premises of the customer and is not inside any terminal equipment.

(k) “Procurement” means the selling, buying, purchasing, renting, leasing or otherwise obtaining telecommunications equipment, system or related services, as well as activities engaged in, resulting in or expected to result in selling, buying, purchasing, renting, leasing or otherwise obtaining telecommunications equipment.

(l) “Telecommunications equipment, systems, related services” are limited to the equipment and means to provide:

- (i) Telecommunications transmission facilities.
- (ii) Telephone systems, including voice processing systems.
- (iii) Facsimile systems.
- (iv) Radio paging services.
- (v) Mobile telephone services, including cellular mobile telephone service.
- (vi) Intercom and paging systems.
- (vii) Video teleconferencing systems.
- (viii) Personal communications networks and services.
- (ix) Any and all systems based on emerging and future telecommunications technologies relative to (i) through (viii) above.

(m) “Telecommunications system lease contract” means a contract between a supplier of telecommunications systems, including equipment and related services, and the Mississippi Department of Information Technology Services through which telecommunications systems, including equipment and related services, may be leased for a term which shall not exceed sixty (60) months for a system lease valued less than One Million Dollars (\$1,000,000.00) and shall not exceed one hundred twenty (120) months for a system lease valued One Million Dollars (\$1,000,000.00) or more.

(n) “Tariffed or regulated service” means telecommunications service offered by common carriers and subject to control by the Mississippi Public Service Commission or the Federal Communications Commission.

(o) “State Data Center” means one or more facilities operated by the Mississippi Department of Information Technology Services to provide information technology resources requiring enterprise computing resources or any other centrally managed information resources.

SOURCES: Codes, 1942, § 8946-61; Laws, 1968, ch. 499, § 1; Laws, 1970, ch. 466, § 1; Laws, 1972, ch. 481, § 1; Laws, 1980, ch. 457; Laws, 1995, ch. 622, § 2; Laws, 1999, ch. 410, § 1; Laws, 2012, ch. 498, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment in (2)(e), deleted “but does not include any agency financed entirely by federal funds” at the end; added (2)(o); and made a minor stylistic change.

§ 25-53-5. Powers, duties and responsibilities.

The authority shall have the following powers, duties, and responsibilities:

(a) The authority shall provide for the development of plans for the efficient acquisition and utilization of computer equipment and services by all agencies of state government, and provide for their implementation. In so doing, the authority may use the MDITS’ staff, at the discretion of the executive director of the authority, or the authority may contract for the services of qualified consulting firms in the field of information technology and utilize the service of such consultants as may be necessary for such purposes.

(b) The authority shall immediately institute procedures for carrying out the purposes of this chapter and supervise the efficient execution of the powers and duties of the office of executive director of the authority. In the execution of its functions under this chapter, the authority shall maintain as a paramount consideration the successful internal organization and operation of the several agencies so that efficiency existing therein shall not be adversely affected or impaired. In executing its functions in relation to the institutions of higher learning and junior colleges in the state, the authority shall take into consideration the special needs of such institutions in relation to the fields of teaching and scientific research.

(c) Title of whatever nature of all computer equipment now vested in any agency of the State of Mississippi is hereby vested in the authority, and no such equipment shall be disposed of in any manner except in accordance with the direction of the authority or under the provisions of such rules and regulations as may hereafter be adopted by the authority in relation thereto.

(d) The authority shall adopt rules, regulations, and procedures governing the acquisition of computer and telecommunications equipment and services which shall, to the fullest extent practicable, insure the maximum of competition between all manufacturers of supplies or equipment or services. In the writing of specifications, in the making of contracts relating to the acquisition of such equipment and services, and in the performance of its other duties the authority shall provide for the maximum compatibility of all information systems hereafter installed or utilized by all state agencies and may require the use of common computer languages where necessary to accomplish the purposes of this chapter. The authority may establish by regulation and charge reasonable fees on a nondiscriminatory basis for the furnishing to bidders of copies of bid specifications and other documents issued by the authority.

(e) The authority shall adopt rules and regulations governing the sharing with, or the sale or lease of information technology services to any nonstate agency or person. Such regulations shall provide that any such sharing, sale or lease shall be restricted in that same shall be accomplished only where such services are not readily available otherwise within the state, and then only at a charge to the user not less than the prevailing rate of charge for similar services by private enterprise within this state.

(f) The authority may, in its discretion, establish a special technical advisory committee or committees to study and make recommendations on technology matters within the competence of the authority as the authority may see fit. Persons serving on the Information Resource Council, its task forces, or any such technical advisory committees shall be entitled to receive their actual and necessary expenses actually incurred in the performance of such duties, together with mileage as provided by law for state employees, provided the same has been authorized by a resolution duly adopted by the authority and entered on its minutes prior to the performance of such duties.

(g) The authority may provide for the development and require the adoption of standardized computer programs and may provide for the

dissemination of information to and the establishment of training programs for the personnel of the various information technology centers of state agencies and personnel of the agencies utilizing the services thereof.

(h) The authority shall adopt reasonable rules and regulations requiring the reporting to the authority through the office of executive director of such information as may be required for carrying out the purposes of this chapter and may also establish such reasonable procedures to be followed in the presentation of bills for payment under the terms of all contracts for the acquisition of computer equipment and services now or hereafter in force as may be required by the authority or by the executive director in the execution of their powers and duties.

(i) The authority shall require such adequate documentation of information technology procedures utilized by the various state agencies and may require the establishment of such organizational structures within state agencies relating to information technology operations as may be necessary to effectuate the purposes of this chapter.

(j) The authority may adopt such further reasonable rules and regulations as may be necessary to fully implement the purposes of this chapter. All rules and regulations adopted by the authority shall be published and disseminated in readily accessible form to all affected state agencies, and to all current suppliers of computer equipment and services to the state, and to all prospective suppliers requesting the same. Such rules and regulations shall be kept current, be periodically revised, and copies thereof shall be available at all times for inspection by the public at reasonable hours in the offices of the authority. Whenever possible no rule, regulation or any proposed amendment to such rules and regulations shall be finally adopted or enforced until copies of said proposed rules and regulations have been furnished to all interested parties for their comment and suggestions.

(k) The authority shall establish rules and regulations which shall provide for the submission of all contracts proposed to be executed by the executive director for computer equipment or services to the authority for approval before final execution, and the authority may provide that such contracts involving the expenditure of less than such specified amount as may be established by the authority may be finally executed by the executive director without first obtaining such approval by the authority.

(l) The authority is authorized to purchase, lease, or rent computer equipment or services and to operate said equipment and utilize said services in providing services to one or more state agencies when in its opinion such operation will provide maximum efficiency and economy in the functions of any such agency or agencies.

(m) Upon the request of the governing body of a political subdivision or instrumentality, the authority shall assist the political subdivision or instrumentality in its development of plans for the efficient acquisition and utilization of computer equipment and services. An appropriate fee shall be charged the political subdivision by the authority for such assistance.

(n) The authority shall adopt rules and regulations governing the protest procedures to be followed by any actual or prospective bidder, offerer

or contractor who is aggrieved in connection with the solicitation or award of a contract for the acquisition of computer equipment or services. Such rules and regulations shall prescribe the manner, time and procedure for making protests and may provide that a protest not timely filed shall be summarily denied. The authority may require the protesting party, at the time of filing the protest, to post a bond, payable to the state, in an amount that the authority determines sufficient to cover any expense or loss incurred by the state, the authority or any state agency as a result of the protest if the protest subsequently is determined by a court of competent jurisdiction to have been filed without any substantial basis or reasonable expectation to believe that the protest was meritorious; however, in no event may the amount of the bond required exceed a reasonable estimate of the total project cost. The authority, in its discretion, also may prohibit any prospective bidder, offerer or contractor who is a party to any litigation involving any such contract with the state, the authority or any agency of the state to participate in any other such bid, offer or contract, or to be awarded any such contract, during the pendency of the litigation.

(o) The authority shall make a report in writing to the Legislature each year in the month of January. Such report shall contain a full and detailed account of the work of the authority for the preceding year as specified in Section 25-53-29(3).

All acquisitions of computer equipment and services involving the expenditure of funds in excess of the dollar amount established in Section 31-7-13(c), or rentals or leases in excess of the dollar amount established in Section 31-7-13(c) for the term of the contract, shall be based upon competitive and open specifications, and contracts therefor shall be entered into only after advertisements for bids are published in one or more daily newspapers having a general circulation in the state not less than fourteen (14) days prior to receiving sealed bids therefor. The authority may reserve the right to reject any or all bids, and if all bids are rejected, the authority may negotiate a contract within the limitations of the specifications so long as the terms of any such negotiated contract are equal to or better than the comparable terms submitted by the lowest and best bidder, and so long as the total cost to the State of Mississippi does not exceed the lowest bid. If the authority accepts one (1) of such bids, it shall be that which is the lowest and best.

(p) When applicable, the authority may procure equipment, systems and related services in accordance with the law or regulations, or both, which govern the Bureau of Purchasing of the Office of General Services or which govern the Mississippi Department of Information Technology Services procurement of telecommunications equipment, software and services.

(q) The authority is authorized to purchase, lease, or rent information technology and services for the purpose of establishing pilot projects to investigate emerging technologies. These acquisitions shall be limited to new technologies and shall be limited to an amount set by annual appropriation of the Legislature. These acquisitions shall be exempt from the advertising and bidding requirement.

(r) All fees collected by the Mississippi Department of Information Technology Services shall be deposited into the Mississippi Department of Information Technology Services Revolving Fund unless otherwise specified by the Legislature.

(s) The authority shall work closely with the council to bring about effective coordination of policies, standards and procedures relating to procurement of remote sensing and geographic information systems (GIS) resources. In addition, the authority is responsible for development, operation and maintenance of a delivery system infrastructure for geographic information systems data. The authority shall provide a warehouse for Mississippi's geographic information systems data.

(t) The authority shall manage one or more State Data Centers, to provide information technology services on a cost-sharing basis. In determining the appropriate services to be provided through the State Data Center, the authority should consider those services that:

(i) Result in savings to the state as a whole;

(ii) Improve and enhance the security and reliability of the state's information and business systems; and

(iii) Optimize the efficient use of the state's information technology assets, including, but not limited to, promoting partnerships with the state institutions of higher learning and community colleges to capitalize on advanced information technology resources.

(u) The authority shall increase federal participation in the cost of the State Data Center to the extent provided by law and its shared technology infrastructure through providing such shared services to agencies that receive federal funds. With regard to state institutions of higher learning and community colleges, the authority may provide shared services when mutually agreeable, following a determination by both the authority and the Board of Trustees of State Institutions of Higher Learning or the Mississippi Community College Board, as the case may be, that the sharing of services is mutually beneficial.

(v) The authority, in its discretion, may require new or replacement agency business applications to be hosted at the State Data Center. With regard to state institutions of higher learning and community colleges, the authority and the Board of Trustees of State Institutions of Higher Learning or the Mississippi Community College Board, as the case may be, may agree that institutions of higher learning or community colleges may utilize business applications that are hosted at the State Data Center, following a determination by both the authority and the applicable board that the hosting of those applications is mutually beneficial. In addition, the authority may establish partnerships to capitalize on the advanced technology resources of the Board of Trustees of State Institutions of Higher Learning or the Mississippi Community College Board, following a determination by both the authority and the applicable board that such a partnership is mutually beneficial.

(w) The authority shall provide a periodic update regarding reform-based information technology initiatives to the Chairmen of the House and Senate Accountability, Efficiency and Transparency Committees.

SOURCES: Codes, 1942, §§ 8946-61, 8946-62; Laws, 1968, ch. 499, §§ 1, 2; Laws, 1970, ch. 466, §§ 1, 2; Laws, 1972, ch. 481, § 1; Laws, 1980, ch. 474; Laws, 1984, ch. 488, § 287; Laws, 1995, ch. 622, § 3; Laws, 1998, ch. 430, § 1; Laws, 1999, ch. 410, § 2; Laws, 2003, ch. 527, § 2; Laws, 2004, ch. 362, § 1; Laws, 2012, ch. 498, § 3, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added (t) through (w).

§ 25-53-7. Members of authority; terms; vacancies; surety bond; restriction on beneficial interest in business or body engaged in information business; legislative designees authorized to attend meetings.

(1) The membership of the authority shall be composed of five (5) members to be appointed by the Governor with the advice and consent of the Senate. The initial terms of the members shall be for one (1), two (2), three (3), four (4) and five (5) years, respectively, and thereafter all terms shall be for five (5) years. Each member may continue to serve for a period not to exceed twelve (12) months after the expiration of his term if his successor is not duly appointed. The initial appointments to the reconstituted authority shall be made no later than June 30, 1984, for terms to begin on July 1, 1984. Vacancies shall be filled in the same manner as original appointments for the unexpired portion of the term vacated. Each member of the authority shall have a minimum of four (4) years' experience in an information technology-related executive position or prior service as a member of the authority.

(2) Each member of the authority shall be required to furnish a surety bond in the minimum amount of Fifty Thousand Dollars (\$50,000.00) to be approved by the Secretary of State, conditioned according to law and payable to the State of Mississippi, before entering upon his duties. The premiums on such bonds shall be paid from any funds available to the authority for such purpose.

(3) No member of the authority, nor its executive director, shall, during his term as such member or director, have any substantial beneficial interest in any corporation or other organization engaged in the information technology business either as manufacturer, supplier, lessor, or otherwise. All members and the executive director shall fully disclose in writing any such beneficial interest, and such disclosure shall be entered on the minutes of the authority.

(4) The Lieutenant Governor may designate one (1) Senator and the Speaker of the House of Representatives may designate one (1) Representative to attend any meeting of the authority. The appointing authorities may designate an alternate member from their respective houses to serve when the regular designee is unable to attend such meetings of the authority. Such legislative designees shall have no jurisdiction or vote on any matter within

the jurisdiction of the authority. For attending meetings of the authority, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the authority will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the authority without prior approval of the proper committee in their respective houses.

SOURCES: Codes, 1942, §§ 8946-62, 8946-64; Laws, 1968, ch. 499, §§ 2, 4; Laws, 1970, ch. 466, §§ 2, 4; Laws, 1984, ch. 488, §§ 281, 282; Laws, 1995, ch. 622, § 4; Laws, 2011, ch. 518, § 2, eff from and after passage (approved Apr. 26, 2011.)

Amendment Notes — The 2011 amendment added the third sentence in (1).

§ 25-53-25. Exemptions; delegation of bidding and contracting responsibilities to purchasing agency; relation to Public Purchases Law.

(1) Nothing in this chapter shall be construed to imply exemption from the public purchases law, being Section 31-7-1 et seq.

(2) The authority may establish policies and procedures for the purpose of delegating the bidding and contracting responsibilities related to the procurement of computer equipment or services to the purchasing agency. Such policies and procedures must address the following issues:

- (a) Establish categories of equipment or services affected;
- (b) Establish maximum unit and/or ceiling prices of such procurements;
- (c) Establish reporting, monitoring and control of such procurements;

and

(d) Establish other such rules and regulations as necessary to fully implement the purposes of this section. Nothing in this subsection shall be construed to imply exemption from the public purchases law, being Section 31-7-1 et seq.

(3) Acquisitions of computer equipment and services by institutions of higher learning or junior colleges wholly with federal funds and not with state general funds shall be exempt from the provisions of this chapter; however, nothing in this subsection shall be construed to imply an exemption of such acquisitions from the public purchases law, being Section 31-7-1 et seq.

(4) [Repealed]

SOURCES: Codes, 1942, § 8946-70; Laws, 1968, ch. 499, § 10; Laws, 1970, ch. 466, § 8; Laws, 1983, ch. 321; Laws, 1986, ch. 446; Laws, 1988 Ex Sess, ch. 14, § 70; Laws, 1994 Ex Sess, ch. 26, § 19; Laws, 2012, ch. 498, § 4, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment deleted “pertain to any agency financed entirely by federal funds; provided, however, that nothing in this subsection shall be construed” following “shall be construed to” in (1).

§ 25-53-29. Powers and responsibilities of authority.

(1) For the purposes of this section the term “bureau” shall mean the “Mississippi Department of Information Technology Services.” The authority shall have the following powers and responsibilities to carry out the establishment of policy and provide for long-range planning and consulting:

(a) Provide a high level of technical expertise for agencies, institutions, political subdivisions and other governmental entities as follows: planning; consulting; project management; systems and performance review; system definition; design; application programming; training; development and documentation; implementation; maintenance; and other tasks as may be required, within the resources available to the bureau.

(b) Publish written planning guides, policies and procedures for use by agencies and institutions in planning future electronic information service systems. The bureau may require agencies and institutions to submit data, including periodic electronic equipment inventory listings, information on agency staffing, systems under study, planned applications for the future, and other information needed for the purposes of preparing the state master plan. The bureau may require agencies and institutions to submit any additional data required for purposes of preparing the state master plan.

(c) Inspect agency facilities and equipment, interview agency employees and review records at any time deemed necessary by the bureau for the purpose of identifying cost-effective applications of electronic information technology. Upon conclusion of any inspection, the bureau shall issue a management letter containing cost estimates and recommendations to the agency head and governing board concerning applications identified that would result in staff reductions, other monetary savings and improved delivery of public services.

(d) Conduct classroom and on-site training for end users for applications and systems developed by the bureau.

(e) Provide consulting services to agencies and institutions or Mississippi governmental subdivisions requesting technical assistance in electronic information services technology applications and systems. The bureau may submit proposals and enter into contracts to provide services to agencies and institutions or governmental subdivisions for such purposes.

(2) The bureau shall annually issue a three-year master plan in writing to the Governor, available on request to any member of the Legislature, including recommended statewide strategies and goals for the effective and efficient use of information technology and services in state government. The report shall also include recommended information policy actions and other recommendations for consideration by the Governor and members of the Legislature.

(3) The bureau shall make an annual report in writing to the Governor, available on request to any member of the Legislature, to include a full and detailed account of the work of the authority for the preceding year. The report shall contain recommendations to agencies and institutions resulting from inspections or consulting contracts. The report shall also contain a summary of

the master plan, progress made, and legislative and policy recommendations for consideration by the Governor and members of the Legislature.

(4) The bureau may charge fees to agencies and institutions for services rendered to them. The bureau may charge fees to vendors to recover the cost of providing procurement services and the delivery of procurement awards to public bodies. The amounts of such fees shall be set by the authority upon recommendation of the Executive Director of the MDITS, and all such fees collected shall be paid into the fund established for carrying out the purposes of this section.

(5) It is the intention of the Legislature that the employees of the bureau performing services defined by this section be staffed by highly qualified persons possessing technical, consulting and programming expertise. Such employees shall be considered nonstate service employees as defined in Section 25-9-107(c)(x) and may be compensated at a rate comparable to the prevailing rate of individuals in qualified professional consulting firms in the private sector. Such compensation rates shall be determined by the State Personnel Director. The number of such positions shall be set by annual appropriation of the Legislature. Qualifications and compensation of the bureau employees shall be set by the State Personnel Board upon recommendation of the Executive Director of the MDITS. The total number of positions and classification of positions may be increased or decreased during a fiscal year depending upon work load and availability of funds.

(6) The bureau may, from time to time, at the discretion of the Executive Director of the MDITS, contract with firms or qualified individuals to be used to augment the bureau's professional staff in order to assure timely completion and implementation of assigned tasks, provided that funds are available in the fund established for carrying out the purposes of this section. Such individuals may be employees of any agency, bureau or institution provided that these individuals or firms meet the requirements of other individuals or firms doing business with the state through the Mississippi Department of Information Technology Services. Individuals who are employees of an agency or institution may contract with the Mississippi Department of Information Technology Services only with the concurrence of the agency or institution for whom they are employed.

SOURCES: Laws, 1984, ch. 488, § 285; Laws, 1985, ch. 525, § 11; Laws, 1995, ch. 622, § 7; Laws, 2013, ch. 430, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment added the second sentence in (4); and made a minor stylistic change in (1).

ELECTRONIC GOVERNMENT SERVICES

SEC.

25-53-151.

Electronic Government Services Fund established; Electronic Government Oversight Committee established to oversee implementation of E-Government and related technology initiatives; duties of committee;

composition of committee; committee meetings; committee reports and recommendations.

§ 25-53-151. Electronic Government Services Fund established; Electronic Government Oversight Committee established to oversee implementation of E-Government and related technology initiatives; duties of committee; composition of committee; committee meetings; committee reports and recommendations.

(1) There is established in the State Treasury the “Electronic Government Services Fund,” into which shall be deposited specific funds appropriated by the Legislature for developing and providing electronic government services within the State of Mississippi. Any funds in the Electronic Government Services Fund at the end of a fiscal year shall not lapse into the State General Fund, but shall be available for expenditure in the subsequent fiscal year. The funds in the Electronic Government Fund shall be available for expenditure pursuant to specific appropriation by the Legislature beginning in fiscal year 2002, to the Mississippi Department of Information Technology Services.

(2) There is hereby established an Electronic Government Oversight Committee to oversee the implementation of E-Government and related technology initiatives. Duties of this committee would include: (a) prioritize and make recommendations for all electronic government services, in order to cut across state and local governmental organizational structures; (b) address policy issues such as privacy, security, transaction fees and accessibility; (c) review ongoing fiscal and operational management and support of portal; (d) provide a mechanism for gathering input from citizens, businesses and government entities; (e) encourage self-service models for citizens through state websites and other electronic services; and (f) promote economic development and efficient delivery of government services by encouraging governmental and private sector entities to conduct their business and transactions using electronic media. The Electronic Government Oversight Committee shall be composed of the following: (a) the Executive Director of the Mississippi Department of Information Technology Services, or his designee; (b) the State Auditor, or his designee; (c) the State Treasurer, or his designee; (d) the Secretary of State, or his designee; (e) the Executive Director of the Department of Finance and Administration, or his designee; (f) the Commissioner of Public Safety, or his designee; (g) the Commissioner of Revenue, or his designee. The committee shall annually elect one (1) member to serve as chairman and one (1) member to serve as vice chairman, who shall act as chairman in the absence of the chairman. The committee shall meet monthly or upon the call of the chairman, and shall make necessary reports and recommendations to the Legislature and the appropriate agencies of state government. All agencies of state government shall cooperate with the committee in providing requested information, shall work closely with and provide information to the committee and shall report to the committee at its request.

The Mississippi Department of Information Technology Services shall provide administrative support for the committee. Nonlegislative members of the committee shall serve without compensation.

SOURCES: Laws, 2001, ch. 509, § 1; Laws, 2011, ch. 518, § 1, eff from and after passage (approved Apr. 26, 2011.)

Amendment Notes — The 2011 amendment deleted “and shall be expended exclusively for developing and providing electronic media government services within the State of Mississippi” from the end of (1); and rewrote (2).

WIRELESS COMMUNICATION COMMISSION

Sec.

25-53-171.

Commission created; responsibilities; membership; meetings; powers and duties; staffing and technical support; Integrated Public Safety Communications Fund; compensation; Wireless Communication Advisory Board; public properties and facilities to be made available to commission; section does not authorize regulation of commercial mobile radio services; section does not supercede authority of MDITS.

§ 25-53-171. Commission created; responsibilities; membership; meetings; powers and duties; staffing and technical support; Integrated Public Safety Communications Fund; compensation; Wireless Communication Advisory Board; public properties and facilities to be made available to commission; section does not authorize regulation of commercial mobile radio services; section does not supercede authority of MDITS.

(1) There is hereby created the Wireless Communication Commission, which shall be responsible for promoting the efficient use of public resources to ensure that law enforcement personnel and essential public health and safety personnel have effective communications services available in emergency situations, and to ensure the rapid restoration of such communications services in the event of disruption caused by natural disaster, terrorist attack or other public emergency.

(2) The Wireless Communication Commission, hereafter referred to as the “commission,” shall consist of the following:

(a) The Executive Director of the Department of Transportation or his designee;

(b) The Commissioner of Public Safety or his designee;

(c) The Executive Director of the Department of Public Health or his designee;

(d) The Executive Director of the Department of Information Technology Services or his designee;

(e) The Executive Director of the Mississippi Emergency Management Agency or his designee;

- (f) The Executive Director of the Mississippi Office of Homeland Security or his designee;
- (g) The President of the Mississippi Sheriff's Association or his designee;
- (h) The President of the Mississippi Association of Supervisors or his designee;
- (i) The President of the Mississippi Municipal Association or his designee;
- (j) The President of the Mississippi Association of Fire Chiefs or his designee;
- (k) The President of the Mississippi Association of Police Chiefs or his designee;
- (l) The Chief of the Mississippi Highway Safety Patrol or his designee;
- (m) The Commissioner of the Department of Corrections or his designee;
- (n) The Adjutant General of the Mississippi National Guard or his designee;
- (o) The Executive Director of the Mississippi Department of Environmental Quality or his designee; and
- (p) The Executive Director of Wildlife, Fisheries and Parks or his designee.

All members of the commission shall serve a term of not less than four (4) years.

(3) Within forty-five (45) days from April 21, 2005, the Executive Director of the Department of Information Technology Services shall call a meeting of the commission in the City of Jackson, Mississippi, and organize by electing a chairman and other officers from its membership. The commission shall adopt rules which govern the time and place for meetings and governing the manner of conducting its business. The commission shall meet at least monthly and maintain minutes of such meetings. A quorum shall consist of a majority of the membership of the commission.

(4) The commission, in conjunction with the Department of Information Technology Services, shall have the sole authority to promulgate rules and regulations governing the operations of the wireless communications system described in paragraph (a) and shall be vested with all legal authority necessary and proper to perform this function including, but not limited to:

(a) Purchasing, leasing, acquiring and otherwise implementing a state-wide wireless communications system to serve wireless users in state and local governments and those private entities that enter into a partnership with the commission. All purchases shall be made in accordance with public purchasing laws and, if required, shall be approved by the Department of Information Technology Services. This system shall enable interoperability between various wireless communications technologies.

(b) Ensuring that federal/state communications requirements are followed with respect to such wireless communications systems.

(c) Providing system planning with all public safety communications systems.

(d) Assisting with establishment of state and local wireless communications.

(e) In consultation with the Department of Information Technology Services, having the authority to permit state and local agencies use of the communications system under the terms and conditions established by the commission.

(f) Providing technical support to users and bearing the overall responsibility for the design, engineering, acquisition and implementation of the statewide communications system and for ensuring the proper operation and maintenance of all equipment common to the system.

(g) Seeking proposals for services through competitive processes where required by law and selecting service providers under procedures provided for by law.

(h) Establishing, in conjunction with the Department of Information Technology Services, policies, procedures and standards which shall be incorporated into a comprehensive management plan for the operation of the statewide communications system.

(i) Having sign-off approval on all wireless communications systems within the state which are owned or operated by any state or local governmental entity, agency or department.

(j) Creating a standard user agreement.

(5) The commission, in conjunction with the Department of Information Technology Services, shall exercise its powers and duties pursuant to this section to plan, manage and administer the wireless communications system. The commission may:

(a) In consultation with the advisory board and the Department of Information Technology Services, establish policies, procedures and standards to incorporate into a comprehensive management plan for use and operation of the communications system.

(b) Enter into mutual aid agreements among federal, state and local agencies for the use of the communications system.

(c) Establish the cost of maintenance and operation of the system and charge subscribers for access and use of the system.

(d) Assess charges for use of the system.

(e) Obtain space through rent or lease of space on any tower under state control. The commission may also rent, lease or sublease ground space as necessary to locate equipment to support antennae on the towers. The costs for use of such space shall be established by the owner/agent for each site when it is determined to be practicable and feasible to make space available.

(f) Provide space through rent or lease of space on any tower under the commission's control. The commission may also rent, lease or sublease ground space as necessary to locate equipment to support antennae on the towers. The costs for use of such space shall be established by the commission when it is determined to be practicable and feasible to make space available.

(g) Refuse to lease space on any tower at any site. All monies collected by the commission for such rents, leases or subleases shall be deposited

directly into a special fund hereby created and known as the “Integrated Public Safety Communications Fund.” This fund shall be administered by the Department of Information Technology Services and may be used by the commission to construct, maintain and operate the system.

(h) Rent, lease or sublease ground space on lands acquired by the commission for the construction of privately owned or publicly owned towers. The commission, as part of such rental, lease or sublease agreement, may require space on such towers for antennae as may be necessary for the construction and operation of the wireless communications system.

(i) Enter into and perform use and occupancy agreements concerning the system.

(j) Exercise any power necessary to carry out the intent of this law.

(6) The Department of Transportation, the Department of Public Safety and other commission members may provide to the commission, on a full-time or part-time basis, personnel and technical support necessary and sufficient to effectively and efficiently carry out the requirements of this section.

(7)(a) Expenditures from the Integrated Public Safety Communications Fund shall be administered by the Department of Information Technology Services with expenditures approved jointly by the commission and the Department of Information Technology Services.

(b) The Integrated Public Safety Communications Fund may consist of the following:

(i) Appropriations from the Legislature;

(ii) Gifts;

(iii) Federal grants;

(iv) Fees and contributions from user agencies that the commission considers necessary to maintain and operate the system; and

(v) Monies from any other source permitted by law.

(c) Any monies remaining in the Integrated Public Safety Communications Fund at the end of the fiscal year shall not revert to the State General Fund, but shall remain in the Integrated Public Safety Communications Fund.

(8) Members of the commission shall not receive any compensation or per diem, but may receive travel reimbursement provided for under Section 25-3-41.

(9) There is hereby created the Wireless Communication Advisory Board for the purpose of advising the Mississippi Wireless Communication Commission in performance of its duties. The advisory board shall be composed of the following:

(a) The Chairman and Vice Chairman of the Senate Public Utilities Committee or their designees;

(b) The Chairman and Vice Chairman of the House of Representatives Public Utilities Committee or their designees;

(c) The Chairman of the Senate Appropriations Committee or his designee;

(d) The Chairman of the House of Representatives Appropriations Committee or his designee;

(e) The Chairman of the Senate Finance Committee or his designee; and

(f) The Chairman of the House of Representatives Ways and Means Committee or his designee.

Members of the advisory board shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the advisory board shall be paid to legislative members while the Legislature is in session.

(10) It is the intent of the Legislature that all state and local government entities make available for purposes of this section all publicly owned wireless communications infrastructure, including, but not limited to, communications towers, transmission equipment, transmission frequencies and other related properties and facilities.

(11) Nothing in this section shall be construed or interpreted to provide for the regulation or oversight of commercial mobile radio services.

(12) Nothing in this section shall be construed to supercede the authority of the Department of Information Technology Services provided in Section 25-53-1 et seq.

SOURCES: Laws, 2005, ch. 536, § 1; Laws, 2011, ch. 445, § 1, eff from and after passage (approved Mar. 23, 2011.)

Amendment Notes — The 2011 amendment rewrote (2)(p), which read “A representative of the SafeCity Initiative.”

WIRELESS COMMUNICATION DEVICES ASSIGNED OR ISSUED TO STATE EMPLOYEES

SEC.

25-53-191.

Statement of need for issuance of wireless communication device to agency officer or employee; prohibition against personal use of device owned by state agencies; prohibition against reimbursement for use of personal wireless communication device; wireless communication device vendors to be selected from state-approved list; model policy regulating personal use of state-owned wireless communication devices to be established; state agencies to adopt model policy or other equally stringent policy.

§ 25-53-191. Statement of need for issuance of wireless communication device to agency officer or employee; prohibition against personal use of device owned by state agencies; prohibition against reimbursement for use of personal wireless communication device; wireless communication device vendors to be selected from state-approved list; model policy regulating personal use of state-owned wireless communication devices to be established; state agencies to adopt model policy or other equally stringent policy.

(1) For the purposes of this section, the following terms shall have the meanings ascribed to them in this section unless the context otherwise clearly requires:

(a) "Department" means the Mississippi Department of Information Technology.

(b) "State agency" means any agency, department, commission, board, bureau, institution or other instrumentality of the state.

(c) "Wireless communication device" means a cellular telephone, pager or a personal digital assistant device having wireless communication capability.

(2) Before a wireless communication device may be assigned, issued or made available to an agency officer or employee, the agency head, or his designee, shall sign a statement certifying the need or reason for issuing the device. No officer or employee of any state agency, except for an officer or employee of the Mississippi Emergency Management Agency, shall be assigned or issued more than one (1) such wireless communication device. No officer or employee of any state agency to whom has been assigned, issued or made available the use of a wireless communication device, the cost of which is paid through the use of public funds, shall use such device for personal use.

(3) A state agency shall not reimburse any officer or employee for use of his or her personal wireless communication device.

(4) Every state agency that, at the expense of the state agency, assigns, issues or makes available to any of its officers or employees a wireless communication device shall obtain and maintain detailed billing for every wireless communication device account. A list of approved vendors for the procurement of wireless communication devices and the delivery of wireless communication device services shall be developed for all state agencies by the Mississippi Department of Information Technology Services in conjunction with the Wireless Communication Commission created in Section 25-53-171. The department, in conjunction with the Wireless Communication Commission, shall exercise the option of selecting one (1) vendor from which to procure wireless communication devices and to provide wireless communication device services, or if it deems such to be most advantageous to the state agencies, it may select multiple vendors. The department, in conjunction with the Wireless Communication Commission, shall select a vendor or vendors on the basis of lowest and best bid proposals. A state agency may not procure a wireless

communication device from any vendor or contract for wireless communication device services with any vendor unless the vendor appears on the list approved by the department, in conjunction with the Wireless Communication Commission. A contract entered into in violation of this section shall be void and unenforceable.

(5) The department shall promulgate a model acceptable use policy defining the appropriate use of all wireless communication devices. The acceptable use policy should specify that these resources, including both devices and services, are provided at the state agency's expense as tools for accomplishing the business missions of the state agency; that all those resources are for business use; and that more than incidental personal use of those resources is prohibited. The acceptable use policy should require that each official and employee issued one (1) of the above devices or authorized to access one (1) of the above services sign the policy and that the signed copy be placed in the personnel file of the official or employee. The acceptable use policy should also require that the use of these resources be tracked, verified and signed by the official or employee and the supervisor of the official or employee at each billing cycle or other appropriate interval. All state agencies shall adopt the model policy or adopt a policy that is, at minimum, as stringent as the model policy and shall provide a copy of the policy to the department.

(6) All state agencies shall purchase or acquire only the lowest cost cellular telephone, pager or personal digital assistance device which will carry out its intended use.

(7) The University of Mississippi Medical Center and its employees, the Mississippi State University Extension Service and its agents and faculty members, the Mississippi State University Agricultural and Forestry Experiment Station and its faculty members, the Mississippi State University Forestry and Wildlife Research Center and its faculty members, and the Mississippi State University College of Veterinary Medicine and its faculty members shall be exempt from the application of this section.

(8) The State Auditor shall conduct necessary audits to ensure compliance with the provisions of this section.

SOURCES: Laws, 2006, ch. 537, § 9; Laws, 2008, ch. 401, § 1; Laws, 2013, ch. 452, § 2, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment added “the Mississippi State University Extension Service and its agents and faculty members ... and the Mississippi State University College of Veterinary Medicine and its faculty members” at the end of (7); and made a minor stylistic change.

CHAPTER 58

Geographic Information System

In General	25-58-1
Remote Sensing and Geographic Information Systems	25-58-21

IN GENERAL

SEC.

25-58-1. Definitions; boards of supervisors authorized to create geographic information system and prepare multipurpose cadastre.

§ 25-58-1. Definitions; boards of supervisors authorized to create geographic information system and prepare multipurpose cadastre.

(1) For the purposes of this section, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) “Geographic information system” means a computerized, spatial coordinate mapping and relational data base technology which (i) captures, assembles, stores, converts, manages, analyzes, amalgamates and records, in the digital mode, all kinds and types of information and data; (ii) transforms such information and data into intelligence; and subsequently (iii) retrieves, presents and distributes that intelligence to a user for use in making the intelligent decisions necessary for sound management of private or political affairs.

(b) “Data base” means a collection of available information and data assembled into electronic files for efficient and timely management of county and municipal affairs and functions and the exercise of the powers, duties and responsibilities placed upon the governing authorities of a county or municipality by Mississippi law and the Mississippi Constitution.

(c) “Multipurpose cadastre” means a uniformly accepted base map registered to the Mississippi State Plane Coordinate System and depicting boundaries of all public properties.

(d) “Mississippi State Plane Coordinate System” means the system of plane rectangular coordinates established by the National Geodetic Survey which system is further identified as North American Datum (NAD) 1983.

(2) The board of supervisors of any county and the governing authorities of any municipality are hereby authorized and empowered, in their discretion, to do all things necessary and desirable to create a geographic information system for the county or municipality, as appropriate. Data bases for such a system shall be created under the direct supervision of persons who are experienced in and possess a demonstrated knowledge of the preparation of geographic information systems and of the data bases and the other requirements and activities related thereto.

(3) The board of supervisors of any county and the governing authorities of any municipality are further authorized and empowered, in their discretion, to prepare, or have prepared, a multipurpose cadastre registered to the accuracy standards promulgated by the Federal Geodetic Control Committee established under the provisions of the United States Office of Management and Budget Memoranda A-16.

SOURCES: Laws, 1990, ch. 555, § 1; Laws, 2012, ch. 426, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment deleted former (4) which read: “No geographic information system or multipurpose cadastre shall be contracted for, purchased, leased, or created by any county or municipality unless the county or municipality shall first submit its plan for a geographic information system and multipurpose cadastre to the Mississippi Central Data Processing Authority for its approval, and all bids or proposals for such a geographic information system or multipurpose cadastre shall be submitted to and evaluated by the Mississippi Central Data Processing Authority before any bid or proposal is accepted. In making its evaluation, the Mississippi Central Data Processing Authority shall consider options available to the county or municipality by reason of the existence of other publicly financed, owned, or operated geographic information systems or multipurpose cadastres available to the county or municipality.”

REMOTE SENSING AND GEOGRAPHIC INFORMATION SYSTEMS

§ 25-58-21. Mississippi Coordinating Council for Remote Sensing and Geographic Information Systems established; duties and responsibilities; composition of membership; terms; compensation; funding; staff.

SOURCES: Laws, 2003, ch. 527, § 1; Laws, 2006, ch. 544, § 1; Laws, 2009, ch. 307, § 1; brought forward without change, Laws, 2012, ch. 426, § 2, eff from and after July 1, 2012.

Editor’s Note — This section was brought forward without change by Laws of 2012, ch. 426, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment brought the section forward without change.

CHAPTER 61

Public Access to Public Records

- SEC.
- | | |
|-------------|---|
| 25-61-3. | Definitions. |
| 25-61-11.1. | Exemption for private information of persons possessing a weapon permit. |
| 25-61-15. | Penalty for wrongful denial of access to record. |
| 25-61-17. | Chapter not to affect legislature’s regulation of own proceedings and records access. |
| 25-61-19. | State agencies and departments required to post to websites legislative updates on legislation revising agency or department powers and duties. |

§ 25-61-1. Short title; legislative policy regarding right of access to records.

Cross References — Relation to Mississippi Accountability and Transparency Act, see § 27-104-159.

ATTORNEY GENERAL OPINIONS

A non-profit public utility corporation is not subject to the Mississippi Public Records Act, Miss. Code Ann. § 25-61-1, and therefore has the discretion to release or not release consumer records to law enforcement for purposes of keeping up-

dated E-911 records, provided there is no Federal privacy law or rule prohibiting the release. Knight, February 9, 2007, A.G. Op. #07-00007, 2007 Miss. AG LEXIS 14.

§ 25-61-3. Definitions.

The following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) “Public body” shall mean any department, bureau, division, council, commission, committee, subcommittee, board, agency and any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution. The term “public body” includes the governing board of a charter school authorized by the Mississippi Charter School Authorizer Board. Within the meaning of this chapter, the term “entity” shall not be construed to include individuals employed by a public body or any appointed or elected public official.

(b) “Public records” shall mean all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body.

(c) “Data processing software” means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications and computer networking programs.

(d) “Proprietary software” means data processing software that is obtained under a licensing agreement and is protected by copyright or trade secret laws.

(e) “Incident report” means a narrative description, if such narrative description exists and if such narrative description does not contain investigative information, of an alleged offense, and at a minimum shall include the name and identification of each person charged with and arrested for the alleged offense, the time, date and location of the alleged offense, and the property involved, to the extent this information is known.

(f) “Investigative report” means records of a law enforcement agency containing information beyond the scope of the matters contained in an

incident report, and generally will include, but not be limited to, the following matters if beyond the scope of the matters contained in an incident report:

(i) Records that are compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, the disclosure of which would harm the investigation which may include crime scene reports and demonstrative evidence;

(ii) Records that would reveal the identity of informants and/or witnesses;

(iii) Records that would prematurely release information that would impede the public body's enforcement, investigative or detection efforts;

(iv) Records that would disclose investigatory techniques and/or results of investigative techniques;

(v) Records that would deprive a person of a right to a fair trial or an impartial adjudication;

(vi) Records that would endanger the life or safety of a public official or law enforcement personnel, or confidential informants or witnesses;

(vii) Records pertaining to quality control or PEER review activities;

or

(viii) Records that would impede or jeopardize a prosecutor's ability to prosecute the alleged offense.

(g) "Law enforcement agency" means a public body that performs as one (1) of its principal functions activities pertaining to the enforcement of criminal laws, the apprehension and investigation of criminal offenders, or the investigation of criminal activities.

SOURCES: Laws, 1983, ch. 424, § 2; Laws, 1996, ch. 453, § 2; Laws, 2008, ch. 392, § 1; Laws, 2013, ch. 497, § 34, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment added the next-to-last sentence in (a).

Cross References — Mississippi Charter School Authorizer Board, generally, see §§ 37-179-1 et seq.

§ 25-61-5. Public access to records; written explanation required when records cannot be produced within specified time; form and retention of denials.

ATTORNEY GENERAL OPINIONS

A municipality is entitled to adopt reasonable procedures in which its records are made available to the public pursuant to Miss. Code Ann. § 25-61-5, and may charge a fee calculated to reimburse it for, but in no case exceed, the actual cost of providing the records. Municipal alder-

men or councilmen, however, are entitled to reasonable access without charge to any information required to perform the duties of their office. Haney, March 9, 2007, A.G. Op. #07-00104, 2007 Miss. AG LEXIS 100.

§ 25-61-7. Fees for costs incident to providing records.**ATTORNEY GENERAL OPINIONS**

A municipality is entitled to adopt reasonable procedures in which its records are made available to the public pursuant to Miss. Code Ann. § 25-61-5, and may charge a fee calculated to reimburse it for, but in no case exceed, the actual cost of providing the records. Municipal alder-

men or councilmen, however, are entitled to reasonable access without charge to any information required to perform the duties of their office. Haney, March 9, 2007, A.G. Op. #07-00104, 2007 Miss. AG LEXIS 100.

§ 25-61-11.1. Exemption for private information of persons possessing a weapon permit.

The name, home address, any telephone number or other private information of any person who possesses a weapon permit issued under Section 45-9-101 or Section 97-37-7 shall be exempt from the Mississippi Public Records Act of 1983.

SOURCES: Laws, 2013, ch. 307, § 1, eff from and after passage (approved Mar. 4, 2013.)

§ 25-61-15. Penalty for wrongful denial of access to record.

Any person who shall deny to any person access to any public record which is not exempt from the provisions of this chapter may be liable civilly in a sum not to exceed One Hundred Dollars (\$100.00) per violation, plus all reasonable expenses incurred by such person bringing the proceeding.

SOURCES: Laws, 1983, ch. 424, § 8; Laws, 2008, ch. 562, § 19, eff August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2011, ch. 310, § 2, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment substituted “may be liable” for “shall be liable” and inserted “per violation” following “One Hundred Dollars (\$100.00).”

§ 25-61-17. Chapter not to affect legislature’s regulation of own proceedings and records access.

Nothing in this chapter shall be construed as denying the Legislature the right to determine the rules of its own proceedings and to regulate public access to its records. However, notwithstanding the provisions of this section, the Legislature shall be subject to the provisions of Sections 27-104-151 through 27-104-159.

SOURCES: Laws, 1983, ch. 424, § 9; Laws, 2011, ch. 489, § 8, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment added the last sentence.

§ 25-61-19. State agencies and departments required to post to websites legislative updates on legislation revising agency or department powers and duties.

Within sixty (60) days after the end of each regular session of the Legislature, each agency or department of the State of Mississippi shall include on the Internet website of the agency or department a separate section that provides a legislative update on any legislation enacted at the legislative session that revises the powers and duties of the agency or department. The agency or department shall include a link to the legislative update section on the home page of the website. The legislative update section shall contain a summary of the revisions made to the powers and duties of the agency or department by the legislation, and a contact section or link so that members of the public may comment on or ask questions about the revisions or the effect of the revisions in the legislation. The legislative update section shall remain on the website of the agency or department until January 1st of the following year.

SOURCES: Laws, 2013, ch. 453, § 1, eff from and after July 1, 2013.

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